

NOTICE AND AGENDA Commission Meeting¹

**Please Note Location Change:
Los Angeles City Hall
200 North Spring Street, Room 1010
Los Angeles, CA 90012**

**Thursday, June 9, 2011
10:00 AM**

PUBLIC COMMENT

1. Public Comment.

This portion of the meeting is reserved for comment on items not on the agenda. Under the Bagley-Keene Act, the Commission cannot act on items raised during public comment, but may respond briefly to statements made or questions posed; request clarification; or refer the item to staff.

PROPOSED CONSENT CALENDAR – ITEMS 2 Through 18

¹You can obtain further information about the meeting by contacting Roman G. Porter, Executive Director, c/o Commission Assistant, 428 J Street, Suite 620, Sacramento, CA, 95814, Tel. 916-322-5745. Written comments on agenda items should be submitted to the Commission no later than 12:00 p.m. the day before the meeting in order to afford the Commissioners adequate time to fully consider the comments. The fax number for comment letters is 916-322-6440.

The agenda and related documents are posted on the FPPC website at www.fppc.ca.gov. Materials submitted by the public regarding each agenda item will be made available at the meeting and on the website.

Members of the public may listen to the meeting by phone by calling (888) 751-0624; access code is 723284.

The meeting location is accessible to the disabled. Persons who, due to a disability, need assistance in order to participate in this meeting should, prior to the meeting, contact the Commission Assistant at 916-322-5745 (voice), 916-322-6440 (facsimile) or in writing. TTY/TDD and Speech-to-Speech users may dial 7-1-1 for the California Relay Service to submit comments on an agenda item or to request special accommodations for persons with disabilities. Please allow a reasonable period of time between the request and the meeting date.

2. **Approval of April 11, 2011 Commission meeting minutes.**

Campaign Reporting Violation

3. **In the Matter of Edwin Jacinto; FPPC No. 10/225 (Default Decision).** Staff: Commission Counsel Milad Dalju and Special Investigator Janet Seely. Edwin Jacinto, as a candidate for a seat on the Lynwood City Council in the November 3, 2009, general election, failed to file pre-election campaign statements for the July 1, 2009, through September 19, 2009, reporting period, by the September 24, 2009, deadline; the September 20, 2009, through October 17, 2009, reporting period, by the October 22, 2009, deadline, in violation of Government Code Sections 84200.5, subd. (c), and 84200.8 subd. (a)(b) (2 counts), and failed to file semi-annual campaign statements for the October 18, 2009, through December 31, 2009, reporting period, by the February 1, 2010, deadline, and the January 1, 2010, through June 30, 2010, reporting period, by the August 2, 2010, deadline, in violation of Government Code Section 84200, subd. (a) (2 counts). **Total Proposed Penalty: \$12,000.**
4. **In the Matter of Jeff Stone, Jeff Stone for State Senate 2010, and Joseph Kuebler; FPPC No. 10/552.** Staff: Commission Counsel Bridgette Castillo, and Special Investigator Leon Nurse-Williams. Respondent Jeff Stone was an unsuccessful candidate for the California State Senate in the June 8, 2010, primary election, representing the 36th District. The Jeff Stone for State Senate 2010 committee ("Respondent Committee") was the candidate controlled committee. At all relevant times, Respondent Joseph Kuebler was the treasurer for Respondent Committee. Respondents failed to file online campaign reports disclosing contributions received of \$1,000 or more totaling \$84,052 during the 90 day period before an election, in violation of Government Code Section 85309, subd. (a) (8 counts). **Total Proposed Penalty: \$16,000.**

Campaign Reporting Violation – Streamline

5. **In the Matter of San Diego County Otay Water District Board Member Larry Breitfelder; FPPC No. 11/104.** Staff: Political Reform Consultant Adrienne Korchmaros. Respondent Larry Breitfelder, a board member for the San Diego County Otay Water District, failed to timely file the campaign short form covering

the period of calendar year 2010 with the County of San Diego, in violation of Government Code Section 84206 (1 count). **Total Proposed Penalty: \$200.**

6. **In the Matter of Brown for Council 2010 Committee, David Brown, and Wayne Ivey, Treasurer; FPPC No. 11/207.** Staff: Political Reform Consultant Teri Rindahl. Marina City Councilman David Brown, and his committee, Brown for Council 2010 Committee, failed to timely file a semiannual campaign statement for the period ending December 31, 2010, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$200.**
7. **In the Matter of Sergio Calderon; Friends of Calderon for Director, and Billie Hernandez, Treasurer; FPPC No. 11/053.** Staff: Political Reform Consultant Teri Rindahl. Respondents Sergio Calderon, a board member for Water Replenishment District 4, his committee, Friends of Calderon for Director, and Billie Hernandez, Treasurer, failed to timely file a pre-election campaign statement for the period covering October 1, 2010, through October 16, 2010, in violation of Government Code Section 84200.5 (1 count). **Total Proposed Penalty: \$400.**
8. **In the Matter of Georges Marciano, Georges Marciano for Governor 2010, and Georges Marciano, Treasurer; FPPC No. 10/353.** Staff: Political Reform Consultant Adrienne Korchmaros. Respondents Georges Marciano, Georges Marciano for Governor 2010, and Georges Marciano as his committee's treasurer, failed to timely file two semiannual reports covering the periods July 1, 2009, through December 31, 2009, and January 1, 2010, through June 30, 2010, with either the Secretary of State's office, both the paper and the electronic version, or the County of Los Angeles, in violation of Government Code Section 84200 (6 counts). **Total Proposed Penalty: \$1,200.**
9. **In the Matter of Committee to Elect Joseph Messina, Joseph Messina, Board Member, and R.J. Kelly, Treasurer; FPPC No. 09/233.** Staff: Chief of Enforcement Gary Winuk and Law Clerk Amanda Allen. William S. Hart High School District Board member and Candidate Joseph Messina, and his committee, Committee to Elect Joseph Messina, and R.J. Kelly, Treasurer, failed to timely file one pre-election and one semiannual campaign statement, for the reporting periods ending December 31, 2007, and December 31, 2008, in

violation of Government Code Section 84200 (2 counts). **Total Proposed Penalty: \$400.**

10. **In the Matter of Ronald C. Smith, Friends of Ron Smith, and Ronald C. Smith, Treasurer; FPPC No. 10/1050.** Staff: Political Reform Consultant Adrienne Korchmaros. Respondents Ronald C. Smith, a candidate for West Basin Municipal Water District, Friends of Ron Smith, and Ronald C. Smith as his committee's treasurer, failed to timely file one semiannual report covering the period January 1, 2010, through June 30, 2010, with the County of Los Angeles, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$200.**

Conflict of Interest

11. **In the Matter of Louie Martinez; FPPC No. 09/261.** Staff: Senior Commission Counsel Neal Bucknell and Special Investigator Beatrice Moore. Respondent Louie Martinez was a Senior Project Manager for the City of Irvine. In or about October 2007 and July 2008, he accepted over-the-limit gifts (substantially discounted home landscaping services) from Artistic Maintenance, Inc., in violation of Government Code Section 89503, subdivision (c) (2 counts). Also, in or about April 2008, Respondent used his official position to influence a governmental decision in which he had reason to know that he had a financial interest, in violation of Government Code Section 87100 (1 count). Specifically, he inspected civic center landscaping work performed by Artistic Maintenance, Inc., and based upon this inspection, he approved an invoice for payment of approximately \$86,000 to Artistic Maintenance, Inc. **Total Proposed Penalty: \$8,000.**

Statement of Economic Interests – Failure to File – Streamline

12. **In the Matter of Marilyn Anderson; FPPC No. 10/824.** Staff: Political Reform Consultant Adrienne Korchmaros. Marilyn Anderson, City of South Pasadena finance committee member, failed to timely file an assuming office and 2009 annual Statement of Economic Interests, in violation of Government Code Section 87300 (2 counts). **Total Proposed Penalty: \$800.**

13. **In the Matter of Peter Arellano; FPPC No. 11/016.** Staff: Political Reform Consultant Jeanette E. Turvill. Peter Arellano, a member of the South County Regional Wastewater Authority, failed to timely file his 2009 annual Statement of Economic Interests by the April 1, 2010, deadline, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$400.**
14. **In the Matter of Rod Dowse; FPPC Case No. 10/986.** Staff: Political Reform Consultant Adrienne Korchmaros. Respondent Rod Dowse, a Grenada Irrigation District board member for the County of Siskiyou, failed to timely file his 2009 annual Statement of Economic Interests covering the period January 1, 2009, through December 31, 2009, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**
15. **In the Matter of Jon Messick; FPPC No. 09/580. Staff:** Chief of Enforcement Gary Winuk, Law Clerk Amanda Allen. Respondent Jon Messick, Planning Commissioner for the County of Yuba, failed to timely file a 2008 annual Statement of Economic Interests, in violation of Government Code Section 87203 (1 count). **Total Proposed Penalty: \$200.**
16. **In the Matter of Erin O'Brien; FPPC No. 11/017.** Staff: Political Reform Consultant Jeanette E. Turvill. Erin O'Brien, a member of the Santa Clara County Social Services Advisory Commission, failed to timely file her 2009 annual Statement of Economic Interests by the April 1, 2010, deadline, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**
17. **In the Matter of Gale Simmons; FPPC No. 11/010.** Staff: Political Reform Consultant Jeanette E. Turvill. Gale Simmons, a member of the Santa Clara County Child Abuse Council, failed to timely file her 2009 annual Statement of Economic Interests by the April 1, 2010, deadline, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**
18. **In the Matter of Julie Tumamait-Stenslie; FPPC No. 10/1104.** Staff: Political Reform Consultant Teri Rindahl. Respondent Julie Tumamait-Stenslie, a commissioner of the Native American Heritage Commission, failed to file a 2009 annual Statement of Economic Interests, in violation of Government Code

Section 87300 (1 count). **Total Proposed Penalty: \$200.**

GENERAL – Items 19 Through 24

Re-Hearing

- 19. In the Matter of Frank Molina and Strategic Solutions Advisors; FPPC No. 09/807.** Staff: Chief of Enforcement Gary Winuk and Program Specialist Bob Perna. Respondent Frank Molina, a registered California lobbyist and Respondent Strategic Solutions Advisors, a California lobbying firm, failed to timely file quarterly lobbyist and lobbying firm reports from January 1, 2007, through December 31, 2009, in violation of Government Code Sections 86113 and 86114 (12 counts). **Total Proposed Penalty: \$30,000.**

Regulatory Amendments

- 20. Amendments to Regulation 18360 – Commission Decisions to Investigate.**

Commission Staff: General Counsel Scott Hallabrin and Commission Counsel Sukhi Brar. Staff proposes amendments to Regulation 18360 to require that, except in specified circumstances, no member of the Commission communicate a decision either to investigate, or to take other specified action on, an alleged violation of the Political Reform Act until at least five days have passed from the date the subject of the investigation or alleged violator has been sent notice of the Commission's action. The amendments also seek to clarify that notice of these actions must be contemporaneously sent to any complainant and the subject of the investigation or other action. These amendments are being proposed and to provide due process in the interest of fundamental fairness to subjects of Enforcement complaints and investigations.

- 21. Regulatory Planning for the Year 2011-2012.**

Staff: Assistant General Counsel John W. Wallace. Staff is presenting a process for planning and calendaring regulation projects. The goal will be to create a system that provides advance notice to the public, staff, and the commissioners of upcoming regulatory amendments and adoptions. The early circulation of

regulatory ideas and concepts should result in a more predictable system for promulgating and adopting or amending regulations and a better final product overall. Specific regulation projects and a tentative calendar will be presented to the Commission at a future meeting.

Staff Reports

- 22. **Legislative Report.** Legislative Coordinator Tara Stock.
- 23. **Litigation Report.** John Wallace.
- 24. **Executive Director's Report.** Executive Director Roman Porter.

CLOSED SESSION

25. Pending Litigation (Gov. Code Section 11126(e)(1)).

- a. *ProtectMarriage.com, et al. v. Debra Bowen, et al. (Federal District Court for the Eastern District of California, Case No. 2:09-cv-00058-MCE-DAD).*
- b. *Michelle Berman and Adrienne Lauby v. Fair Political Practices Commission (Petition for Writs of Mandate, Sacramento County Superior Court, Dept. 42, Case No. 34-2010-80000740).*

Upon adjournment of the Commission Meeting:

Staff of the Fair Political Practices Commission will hold an interested persons' meeting to solicit general public comment and suggestions on revising FPPC regulations or FPPC regulatory schemes and thus enable individuals and entities subject to the Political Reform Act (the "Act") to better comply with the Act. Please note that a majority of the Commission may be in attendance.

At the meeting, staff will solicit comments and suggestions on the following general topics:

- 1. Existing regulations or regulatory schemes that are unclear, difficult to comply

with, internally inconsistent, extraneous, or outdated.

2. Any other comments or suggestions that will assist the FPPC in adopting and maintaining clear, consistent, up-to-date regulations that are easier for the regulated public to comply with.
3. New regulations needed to implement or clarify specific statutory provisions in the Act.

(Unapproved and Subject to Change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

April 11, 2011

CALL TO ORDER

Chair Ann Ravel called the meeting to order at 10:00 AM at 428 J Street, Eighth Floor, Sacramento, California. Chair Ravel, Commissioners Sean Eskovitz and Lynn Montgomery, and were present. Commissioner Ronald Rotunda joined by Phone.

Chair Ravel began by introducing herself as the newly appointed Chair, as well as introduced Sean Eskovitz as the new Commissioner. She announced that the FPPC will have more frequent Interested Persons meetings and noted that it's important to have input from the regulated community as well as the public. Chair Ravel would also like to have Commission hearings throughout the state to help increase public involvement.

Chair Ravel asked that item 38 is moved up to allow the Executive Director and FPPC staff to introduce themselves and give an overview of the agency to the new Chair and Commissioner.

38. Executive Director's Report. Staff: Executive Director Roman Porter.

Roman Porter gave an overview of the agency as a whole and each Division Chief gave a brief overview of the functions of their division.

PUBLIC COMMENT

- 1. Public Comment.** This portion of the meeting is reserved for comment on items not on the agenda. Under the Bagley-Keene Act, the Commission cannot act on items raised during public comment, but may respond briefly to statements made or questions posed; request clarification; or refer the item to staff.

Chair Ravel asked if anyone in the audience had comments on any items not on the agenda.

Lance Olson asked that item 31 be removed from the consent calendar.

PROPOSED CONSENT CALENDAR – ITEMS 2 THROUGH 33

Chair Ravel asked the Commissioners if they had any comments or questions on any of the items, and if there were any items they wanted removed from the consent calendar.

Commissioner Montgomery asked that items 7, 9, and 22 be removed from the consent calendar for clarification. After the Commissioner's questions were answered by the Chief of Enforcement, the items were moved back to the consent calendar.

Items 31, 33, and 34 were removed from the consent calendar.

PROPOSED CONSENT CALENDAR – ITEMS 2 THROUGH 34 (except Items 31, 33, & 34)

2. Approval of January 28, 2011 and February 10, 2011 Commission meeting minutes.

Campaign Reporting Violations

3. In the Matter of Tina Baca Del Rio and Friends of Tina Baca Del Rio, FPPC No. 08/423. Total Proposed Penalty: \$26,000.
4. In the Matter of Abel Maldonado, Abel Maldonado for Senate, Christopher J. Raymer, and Chris Steinbruner, FPPC No. 10/070. Total Proposed Penalty: \$28,000.
5. In the Matter of the Redwood City Chamber of Commerce FPPC No. 09/266. Total Proposed Penalty: \$3,000.
6. In the Matter of Arlie Ricasa, Arlie Ricasa 2008, and Kinde Durkee, FPPC No. 10/808. Total Proposed Penalty: \$2,000.

Campaign Reporting Violations – Streamline

7. In the Matter of Allen L. Barker; Allen L. Barker Candidate 28th Assembly District 2010; and Allen L. Barker, Treasurer, FPPC No. 10/663. Total Proposed Penalty: \$200.
8. In the Matter of Larry A. Bedard, FPPC No. 10/1059. Total Proposed Penalty: \$200.
9. In the Matter of The Campaign for Consumer Rights, FPPC No. 10/473. Total Proposed Penalty: \$600.
10. In the Matter of Bret Daniels; Citizens in Support of Bret Daniels; and Bret Daniels, Treasurer, FPPC No. 09/255. Total Proposed Penalty: \$200.
11. In the Matter of Committee to Elect Bob Epple, Robert Epple, Treasurer, FPPC No. 10/923. Total Proposed Penalty: \$400.
12. In the Matter of David Grant, South Orange County Community College District Trustee, and Committee to Elect David Grant Trustee 2010, FPPC No. 10/1087. Total Proposed Penalty: \$200.
13. In the Matter of Friends of Crystal Strait and Eddie Kirby, Treasurer, FPPC No. 10/342. Total Proposed Penalty: \$200.

14. In the Matter of United Democrats of Vallejo and John R. Lewis, Treasurer, FPPC No. 10/320. Total Proposed Penalty: \$200.

Conflict of Interest

15. In the Matter of Dan K. Waters, FPPC No. 10/485. Total Proposed Penalty: \$2,500.

Lobbying

16. In the Matter of Deloitte Consulting, LLP, No. 10/506. Total Proposed Penalty: \$8,000.
17. In the Matter of Santa Ynez Band of Chumash Indians, No. 10/607. Total Proposed Penalty: \$15,000.
18. In the Matter of Soboba Band of Luiseno Indians, No. 10/606. Total Proposed Penalty: \$14,000.
19. In the Matter of Tule River Indian Tribe, No. 10/608. Total Proposed Penalty: \$7,000.

Lobbying – Streamline

20. In the Matter of Downey Regional Medical Center, No. 11/092. Total Proposed Penalty: \$200.

Mass Mailing

21. In the Matter of Jerome Horton, Democrat Jerome Horton for Board of Equalization, Citizens to Elect Honest Officials, and Kinde Durkee, FPPC No. 08/286. Total Proposed Penalty: \$13,000.
22. In the Matter of Protect Burlingame and Kevin Osborne, FPPC No. 09/804. Total Proposed Penalty: \$2,500.

Money Laundering

23. In the Matter of James Larry Minor, No. 11/008. Total Proposed Penalty: \$60,000.

Statement of Economic Interests – Failure to File – Streamline

24. In the Matter of Jim Campbell, FPPC No. 10/1103. Total Proposed Penalty: \$600.
25. In the Matter of Kevin Cheng, FPPC No. 10/993. Total Proposed Penalty: \$200.
26. In the Matter of Leo Chow, FPPC No. 10/999. Total Proposed Penalty: \$200.

27. In the Matter of Leslie Lohse, FPPC No. 10/1102. Total Proposed Penalty: \$600.

28. In the Matter of Luther Pugh, No. 11/015. Total Proposed Penalty: \$200.

29. In the Matter of Katie Townsend-Merino, No. 11/031. Total Proposed Penalty: \$200.

Statement of Economic Interests – Non-Reporting

30. In the Matter of Antonio Villaraigosa, No. 10/579. Total Proposed FPPC Penalty: \$21,000 (Total Proposed Penalty by Los Angeles City Ethics Commission: \$20,849, for a Combined Proposed Penalty: \$41,849)

Statement of Economic Interests – Non-Reporting - Streamline

32. In the Matter of Cheryl Miles, FPPC No. 10/271. Total Proposed Penalty: \$400.

Commissioner Montgomery moved approval of the consent calendar, with the removal of items 31, 33, and 34.

The motion was seconded by Commissioner Eskovitz.

Ayes: Commissioners Eskovitz, Montgomery, Rotunda, and Chair Ravel

The motion passed 4 to 0.

ITEMS REMOVED FROM THE CONSENT CALENDAR

31. In the Matter of Sean MacNeil, FPPC No. 09/645. Staff: Chief of Enforcement Gary Winuk and Senior Investigator Leon Nurse Williams. Respondent Sean MacNeil, former Chief of Staff to California State Senator Pat Wiggins failed to disclose on his 2007 Annual Statement of Economic Interests \$2,000 in income he received from Friends of Pat Wiggins for State Senate 2010 campaign in March 2007 on his 2007 annual Statement of Economic Interests, in violation of Government Code section 87302 (1 count). **Total Proposed Penalty: \$4,000.**

Lance Olson, attorney for the respondent noted that the decision to accept a higher fine was not taken lightly. The decision was made after weighing the cost of the increased fine against the cost of an administrative proceeding.

Commissioner Rotunda moved to accept the stipulation of increasing the fine from \$2,000 to \$4,000.

The motion was seconded by Commissioner Eskovitz.

Ayes: Commissioners Eskovitz, Rotunda, and Chair Ravel

Nos: Commissioner Montgomery

The motion passed 3 to 1.

Consideration of Administrative Law Judge Proposed Decision

- 33. In the Matter of Raymond Haynes Jr., Mr. Raymond Horspool Jr., and Haynes for Assembly 2004, FPPC No. 09/258 OAH No. 2010100426.** Staff: Chief of Enforcement Gary Winuk and Program Specialist Grant Beauchamp. Respondent Haynes was a member of the California State Assembly from 2002 through 2006. Respondent Haynes for Assembly 2004 was Respondent Haynes' candidate controlled campaign committee, and Respondent Horspool was the treasurer for Respondent Haynes for Assembly 2004. Following an administrative hearing in Sacramento, Administrative Law Judge Joann Eshelman issued a proposed decision finding that four violations occurred, and imposing an administrative penalty of \$10,000.

Raymond Haynes addressed the Commission and stated that he was under the impression his committee had been closed in December of 2007. Gary Winuk, Chief of Enforcement noted that over 30 notices were sent to Mr. Haynes since 2009, without response. Mr. Haynes stated that he was out of the country during the time the notices were sent and only contests the amount of the fine not the counts themselves. Enforcement considered the sophistication of the respondent, prior violations and the number of counts before reaching a fine amount.

Commissioner Rotunda agreed that the fine was high and moved to reduce it by half (\$5,000). Commissioner Eskovitz asked Mr. Hayes if he had made arrangements to receive notices while he was out of the country. Mr. Hayes had not made arrangements because he was under the impression his committee had been closed.

Chair Ravel proposed a substitute motion of reducing the fine to \$7,000 (\$4,000 on count 4 and \$1,000 each on counts 1 through 3).

The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Montgomery, Eskovitz, Rotunda, and Chair Ravel
The motion passed 4 to 0.

Motion to Vacate

- 34. Motion to Vacate Default Decision and Order, In the Matter of Tim Foley FPPC No. 10/117** Staff: Gary Winuk, Chief of Enforcement, Commission Counsel Bridgette Castillo. The Commission will consider a motion filed with the Commission by Respondent Foley to vacate the Commission's Default Decision and Order approved at the January 28, 2011 hearing.

Deborah Caplan requested that the Commission hold this item over for the next agenda due to the illness of counsel. The Commission agreed that the item should remain on the April agenda, as long as Ms. Caplan is comfortable with moving forward. She stated that she was able to proceed.

Ms. Caplan acknowledges that the deadline was missed and noted that the Commission denied a request at the January 2010 due to insufficient medical evidence. Ms. Caplan stated that there were several factors in addition to counsel's medical issue and that the respondent himself was not given adequate notice. She said that an attorney's mistake should not be visited upon the client. The Commission agreed that the Enforcement Division gave adequate notice to the respondent and his counsel.

Chair Ravel moved to reject the motion to vacate.

The motion was seconded by Commissioner Eskovitz.

Ayes: Commissioners Eskovitz, Rotunda, and Chair Ravel

Nos: Commissioner Montgomery

The motion passed 3 to 1.

35. Regulatory Review. Staff: Roman G. Porter, Executive Director. The Executive Director will seek direction from the Commission as to which specific regulations or areas of regulations the Commission would like examined for potential elimination or amendment, with the goal of increasing clarity and compliance with the Commission's regulations. Efforts to solicit input from members of the public and regulated community as to how the Commission can increase clarity through a regulatory review will also be discussed.

The Commission agreed to review regulations for amendments or potential elimination.

36. Legislative Report. Staff: Legislative Coordinator Tara Stock.

As submitted.

37. Litigation Report. Staff: General Counsel Scott Hallabrin.

Scott Hallabrin reminded the Commission that he is a retired annuitant and is limited in the amount of hours he can work each month. He announced that this would be his last meeting as General Counsel. He noted that he would continue to support the agency and the legal division in a role that is more suitable given his limited time.

Chair Ravel recessed public session at 11:45 AM and advised the Commission would immediately reconvene in executive session.

The Commission reconvened in public session at 12:30 PM. Chair Ravel adjourned the meeting.

Respectfully Submitted,

Dated:

Adrienne Tackley
Commission Assistant

Approved: _____
Ann Ravel, Chair
Fair Political Practices Commission

1 GARY S. WINUK
Chief of Enforcement
2 MILAD DALJU
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
Sacramento, CA 95814
4 Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932
6 Attorneys for Complainant

7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10 In the Matter of) FPPC No. 10/225
11)
12)
13 EDWIN JACINTO,) DEFAULT DECISION AND ORDER
14)
15 Respondent.) (Gov. Code §§ 11506 and 11520
16)

17 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
18 hereby submits this Default Decision and Order for consideration by the Fair Political Practices
19 Commission at its next regularly scheduled meeting.

20 Pursuant to the California Administrative Procedure Act,¹ Respondent Edwin Jacinto
21 (Respondent) has been served with all of the documents necessary to conduct an administrative hearing
22 regarding the above-captioned matter, including the following:

- 23 1. An Order Finding Probable Cause;
24 2. An Accusation;
25 3. A Notice of Defense (Two Copies);
26

27 ¹The California Administrative Procedure Act, which governs administrative adjudications, is
28 contained in Sections 11370 through 11529 of the Government Code.

1 4. A Statement to Respondent; and

2 5. Copies of Sections 11506, 11507.5, 11507.6 and 11507.7 of the Government Code.

3 Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense
4 within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a
5 hearing on the merits of the Accusation. The Statement to Respondent, served on Respondent, explicitly
6 stated that a Notice of Defense must be filed in order to request a hearing. Respondent failed to file a
7 Notice of Defense within fifteen days of being served with the Accusation.

8 Government Code Section 11520 provides that, if the respondent fails to file a Notice of
9 Defense, the Commission may take action, by way of a default, based upon the respondent's express
10 admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the
11 respondent.

12 Respondent violated the Political Reform Act as described in Exhibit 1, and accompanying
13 declaration, which are attached hereto and incorporated by reference as though fully set forth herein.
14 Exhibit 1 is a true and accurate summary of the law and evidence in this matter. This Default Decision
15 and Order is submitted to the Commission to obtain a final disposition of this matter.

16
17
18 Dated: _____

Roman G. Porter
Executive Director
Fair Political Practices Commission

ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of Twelve Thousand Dollars (\$12,000) upon Respondent Edwin Jacinto, payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices Commission at Sacramento, California.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Edwin Jacinto (Respondent) was an unsuccessful candidate for a City of Lynwood City Council seat in the November 3, 2009, election. As a candidate for city office, Respondent was required to file periodic campaign statements under the Political Reform Act (the “Act”).¹

This matter arose out of a Campaign Disclosure Statements Non-Filer Referral sent to the Fair Political Practices Commission’s Enforcement Division (Enforcement Division) by the City of Lynwood City Clerk (CLCC), for Respondent’s failure to file campaign statements as a candidate for a City of Lynwood City Council seat on the November 3, 2009, election. The subsequent investigation by the Enforcement Division revealed that Respondent failed to file four campaign statements required by the Act. Specifically, Respondent failed to file two pre-election campaign statements and two semi-annual campaign statements.

For the purposes of this Default Decision and Order, Respondent’s violations of the Act are stated as follows:

COUNT 1: As a candidate for a Lynwood City Council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a pre-election campaign statement for the July 1, 2009, through September 19, 2009, reporting period on or before September 24, 2009. By failing to file the pre-election campaign statement by September 24, 2009, Respondent Edward Jacinto violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).

COUNT 2: As a candidate for a Lynwood City Council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a pre-election campaign statement for the September 20, 2009, through October 17, 2009, reporting period on or before October 22, 2009. By failing to file the pre-election campaign statement by October 22, 2009, Respondent Edward Jacinto violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

COUNT 3: As a candidate for a Lynwood City council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a semi-annual campaign statement for the October 18, 2009, through December 31, 2009,

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

reporting period on or before February 1, 2010. By failing to file the semi-annual campaign statement by February 1, 2010, Respondent Edwin Jacinto violated Section 84200, subdivision (a).

COUNT 4:

As a candidate for a Lynwood City council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a semi-annual campaign statement for the January 1, 2010, through June 30, 2010, reporting period on or before August 2, 2010. By failing to file the semi-annual campaign statement by August 2, 2010, Respondent Edwin Jacinto violated Section 84200, subdivision (a).

**DEFAULT PROCEEDINGS UNDER
THE ADMINISTRATIVE PROCEDURE ACT**

When the Fair Political Practice Commission (Commission) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (APA).² (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

PROCEDURAL REQUIREMENTS AND HISTORY

A. Initiation of the Administrative Action

Section 91000.5 provides that "[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action." (Section 91000.5, subd. (a).)

² The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

Documents supporting the procedural history are included in the attached Certification of Records ("Certification") filed herewith at Exhibit A, A-1 through A-8, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent in this matter by serving him with a Report in Support of a Finding of Probable Cause (Report) dated February 4, 2011. (Certification, Exhibit A-1.) Respondent was served by certified mail, return receipt requested.³ The original return receipt addressed to Respondent was signed on February 10, 2011, and was returned to the Enforcement Division. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on February 10, 2011, the date the registered mail receipt was signed, and the five year statute of limitations was effectively tolled on this date.

As required by Section 83115.5, the packet served on Respondent contained a cover letter, dated February 7, 2011, and a memorandum describing Probable Cause Proceedings, advising that Respondent had 21 days in which to request a probable cause conference and/or to file a written response to the Report. (Certification, Exhibit A-3.) Respondent neither requested a probable cause conference nor submitted a written response to the Report.

B. Ex Parte Request for a Finding of Probable Cause

Since Respondent failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter on March 4, 2011. (Certification, Exhibit A-4.) Respondent was sent copies of these documents. (Certification, Exhibit A-5.)

On March 9, 2011, Executive Director Roman G. Porter issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-6.)

³ Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

C. The Issuance and Service of the Accusation

Under the Act, if the Executive Director makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On March 9, 2011, the Commission's Executive Director, Roman G. Porter, issued an Accusation against Respondent in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6 and 11507.7, and a cover letter dated March 10, 2011, were personally served on Respondent on March 21, 2011. (Certification, Exhibit A-7.)

Along with the Accusation, the Enforcement Division served Respondent with a “Statement to Respondent” which notified them that they could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, they would be deemed to have waived the right to a hearing. Respondent did not file a Notice of Defense within the statutory time period, which ended on April 5, 2011.

As a result, on May 20, 2011, Commission Counsel Milad Dalju sent a letter to Respondent advising him that this matter would be submitted for a Default Decision and Order at the Commission’s public meeting scheduled for June 9, 2011. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (Certification, Exhibit A-8.)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. The Act therefore establishes a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

The following reflects the Act as it was in effect at the time of the relevant violations.

Duty to File Campaign Statements and Reports

The Act requires candidates to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the campaign. A candidate includes, in relevant part, and individual who is listed on the ballot for election to any elective office. (Section 82001.)

Candidates for city office must file the original and one copy of all required campaign statements with the clerk of the city in which they are running for office. (Section 84215, subd. (e).)

Duty to File Pre-Election Campaign Statements

Candidates are required to file two pre-election campaign statements before an election. (Section 84200.5.)

For all candidates being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year, one pre-election campaign statement for the reporting period ending 45 days before the election must be filed no later than 40 days before the election.⁴ (Sections 84200.5, subd. (c), 84200.8, subd. (a).) Subsequently, another

⁴ Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than

pre-election campaign statement for the reporting period ending 17 days before the election must be filed no later than 12 days before the election. (Sections 84200.5, subd. (c), 84200.8, subd. (b).)

Duty to File Semi-Annual Campaign Statements

Candidates are required to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Section 84200, subd. (a).) All filing obligations continue until the campaign is terminated by filing a statement of termination (Form 410) with the Secretary of State and a copy with the local filing officer receiving the campaign's original campaign statements. (Section 84214; Regulation 18404.)

SUMMARY OF THE FACTS

Unless otherwise indicated, documents supporting the following summary of evidence are included in the attached Certification of Records filed herewith at Exhibit A, A-9 through A-12, and incorporated herein by reference.

Respondent was an unsuccessful candidate for a City of Lynwood City Council seat in the November 3, 2009, election, and failed to file with the City of Lynwood City Clerk (CLCC) pre-election campaign statements for the July 1, 2009, through September 19, 2009, reporting period on or before September 24, 2009, and the September 20, 2009, through October 17, 2009, reporting period on or before October 22, 2009. Respondent also failed to file with the CLCC semi-annual campaign statements for the October 18, 2009, through December 31, 2009, reporting period on or before February 1, 2010, and the January 1, 2010, through June 30, 2010, reporting period on or before August 2, 2010.

The CLCC issued Respondent written notices on November 3, 2009, November 12, 2009, and February 15, 2010, warning Respondent that he had failed to file the two pre-election and a semi-annual campaign statement on behalf of his campaign. (Certification, Exhibit A-9.)

On or about March 29, 2010, the Enforcement Division received a Campaign Disclosure Statements Non-Filer Enforcement Referral from the CLCC for Respondent's failure to file two pre-election campaign statements and a semi-annual campaign statement. (Certification, Exhibit A-10.)

On or about September 7, 2010, Adrienne Korchmaros, Political Reform Consultant with the Enforcement Division, contacted the City of Lynwood City Clerk and was informed that Respondent also failed to file a semi-annual campaign statement for the January 1, 2010, through June 30, 2010, period, on or before the August 2, 2010. (Exhibit B.)

On or about December 29, 2010, Janet Seely, Special Investigator with the Enforcement Division, sent Respondent a letter requesting that Respondent submit the four delinquent

a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day.

campaign statements and all records of Respondent's 2009 campaign. (Certification, Exhibit A-11.) Respondent did not respond to the request.

Accordingly, Respondent committed four violations of the Act, as follows:

Count 1

Failure to File a Pre-Election Campaign Statement

As a candidate for a Lynwood City Council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a pre-election campaign statement for the July 1, 2009, through September 19, 2009, reporting period on or before September 24, 2009. Respondent failed to file the required pre-election campaign statement. By failing to file the pre-election campaign statement by September 24, 2009, Respondent violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).

Count 2

Failure to File a Pre-Election Campaign Statement

As a candidate for a Lynwood City Council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a pre-election campaign statement for the September 20, 2009, through October 17, 2009, reporting period on or before October 22, 2009. Respondent failed to file the required pre-election campaign statement. By failing to file the pre-election campaign statement by September 24, 2009, Respondent violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

Count 3

Failure to File a Semi-Annual Campaign Statement

As a candidate for a Lynwood City council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a semi-annual campaign statement for the October 18, 2009, through December 31, 2009, reporting period on or before February 1, 2010. Respondent failed to file the required semi-annual campaign statement. By failing to file the semi-annual campaign statement by August 2, 2010, Respondent violated Section 84200, subdivision (a).

Count 4

Failure to File a Semi-Annual Campaign Statement

As a candidate for a Lynwood City council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a semi-annual campaign statement for the January 1, 2010, through June 30, 2010, reporting period on or before August 2, 2010. Respondent failed to file the required semi-annual campaign

statement. By failing to file the semi-annual campaign statement by August 2, 2010, Respondent violated Section 84200, subdivision (a).

CONCLUSION

This matter consists of four counts of violating the Act, which carry a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count for a total of Twenty Thousand Dollars (\$20,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

The failure to file campaign statements is a serious violation of the Act because it deprives the public of important information about a candidate's contributors and financial activities. In this matter, Respondent failed to file all of the required campaign statements related to the November 3, 2009, election, two of which should have been filed prior to the election. Therefore the public was completely deprived of information regarding Respondent's contributors and financial activities.

Respondent's violations of the Act were deliberate at worst and negligent at best. Due to previous enforcement actions against Respondent, Respondent should have been aware of his duties and requirements under the Act. On April 5, 2007, the Enforcement Division sent Respondent an advisory letter advising Respondent of his duties to file campaign statements. In August of 2009 the Enforcement Division sent Respondent a warning letter in response to his failure to timely file campaign statements for his 2005 campaign for a Lynwood City Council seat.

Additionally, Respondent did not demonstrate good faith in consulting with the Commission staff. Respondent failed to respond to multiple attempts by the Enforcement Division to contact him. Respondent has also failed to file any of the delinquent statements, even after multiple requests by the Enforcement Division.

Respondent has also demonstrated a pattern of violating the Act. Respondent failed to timely file campaign statements for his 2005 campaign for a Lynwood City Council seat, and was sent a warning letter by the FPPC for those violations in August of 2009.

The facts of this case show a pattern of violations that, taken as a whole, resulted in a complete lack of disclosure of Respondent's campaign activities during Respondent's campaign for a City of Lynwood City Council seat in the November 3, 2009, election. Respondent's

conduct shows a reckless disregard for the Act, and Respondent's violations are serious.

Regarding Counts 1 and 2, recent penalties approved by the Commission concerning violations of Section 84200.5, subdivision (c), include:

- *In the Matter of Robert L. Griffith and Committee to Elect Robert Griffith* (Default), FPPC No. 05/848. This case involved two counts for violations of Section 84200.5, subdivision (a). A penalty of Three Thousand Five Hundred Dollars (\$3,500) per count was approved by the Commission on September 10, 2009, due to respondents' failure to file both of their required pre-election statement before the election, which left the public with no information regarding the committee's contributors and financial activities. Additionally, in 2004 the Enforcement Division issued a warning letter against respondent Robert L. Griffith for failing to file a semi-annual campaign statement for respondent Committee to Elect Robert Griffith.
- *In the Matter of Maria G. Lopez, Campaign to Elect Maria Lopez and Adolph J. Lopez* (Default), FPPC No. 06/379. This case involved one count for the violation of Section 84200.5, subdivision (a). A penalty of Three Thousand Dollar (\$3,000) was approved by the Commission on October 8, 2009, due to respondents' failure to file a pre-election statement which deprived the public of information regarding the committee's contributors and financial activities. Respondents had no prior history of violating the Act.

Because Respondent's actions were similarly in total contravention of the goals and purposes of the campaign disclosure provisions of the Act as set forth in Section 81002, subdivision (a), imposition of an administrative penalty in the amount of Three Thousand Five Hundred (\$3,500) per count for Count 1 and 2 is recommended. This is in the high range of penalties but below the maximum penalty recommended for violations of Section 85200.5, subdivision (c).

Regarding Counts 3 and 4, recent penalties approved by the Commission concerning violations of Section 84200, subdivision (a), include:

- *In the Matter of Barbara Dore and Dore for Water Board* (Default), FPPC No. 09/192. This case involved four counts for violations of Section 84200, subdivision (a). A penalty of Two Thousand Five Hundred Dollar (\$2,500) per count was approved by the Commission on October 8, 2009, due to respondents' failure to file semi-annual campaign statements which deprived the public of information regarding the committee's contributors and financial activities. Respondents had no prior history of violating the Act.
- *In the Matter of Elizabeth Todd-Gallardo* (Default), FPPC No. 07/544. This case involved three counts for violations of Section 84200, subdivision (a). A penalty of Two Thousand Five Hundred Dollar (\$2,500) per count was approved by the Commission on May 13, 2010, due to respondent's failure to file semi-annual campaign statements which deprived the public of information regarding the

committee's contributors and financial activities. Additionally, in 2007 the Enforcement Division issued a warning letter against respondent Elizabeth Todd-Gallardo for failing to file a semi-annual campaign statement.

Because Respondent's actions were similarly in total contravention of the goals and purposes of the campaign disclosure provisions of the Act as set forth in Section 81002, subdivision (a), imposition of an administrative penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) per count for Count 3 and 4 is recommended. This is in the mid range of penalties but below the maximum penalty recommended for violations of Section 85200, subdivision (a).

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a penalty of Twelve Thousand Dollars (\$12,000) is recommended.

* * * * *

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Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of:

JEFF STONE, JEFF STONE FOR
STATE SENATE 2010,
and, JOSEPH KUEBLER
Respondents.

FPPC No: 10/552

STIPULATION, DECISION, and
ORDER

Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission, and Respondents Jeff Stone, Jeff Stone for State Senate 2010, and Joseph Kuebler hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents.

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear at any administrative hearing held in this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-

1 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to
2 have an impartial administrative law judge preside over the hearing as a hearing officer, and to
3 have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by
5 failing to file online campaign reports disclosing contributions of \$1,000 or more received during
6 an election cycle, in violation of Government Code section 85309, subdivision (a) (8 Counts); as
7 described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully
8 set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
10 Respondents also agree to the Commission imposing upon them an administrative penalty in the
11 amount of Sixteen Thousand Dollars (\$16,000). A cashier's check from Respondents in said
12 amount, made payable to the "General Fund of the State of California," is submitted with this
13 Stipulation as full payment of the administrative penalty, and shall be held by the State of
14 California until the Commission issues its Decision and Order regarding this matter. The parties
15 agree that in the event the Commission refuses to accept this Stipulation, it shall become null and
16 void, and within fifteen (15) business days after the Commission meeting at which the
17 Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation
18 shall be reimbursed to Respondents. Respondents further stipulate and agree that in the event the
19 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
20 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
21 disqualified because of prior consideration of this Stipulation.

22
23
24
25 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

1 Dated: _____

Jeff Stone, individually and on behalf of
Jeff Stone for State Senate 2010, Respondents

4 Dated: _____

Joseph Kuebler, individually and on behalf
of Jeff Stone for State Senate 2010, Respondents

8 **DECISION AND ORDER**

9 The foregoing Stipulation of the parties “In the Matter of Jeff Stone, Jeff Stone for State
10 Senate 2010, and Joseph Kuebler, FPPC No.10/552,” including all attached Exhibits, is hereby
11 accepted as the final Decision and Order of the Fair Political Practices Commission, effective
12 upon execution below by the Chairman.

14 IT IS SO ORDERED.

16 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Jeff Stone (“Respondent Stone”) was an unsuccessful candidate for the California State Senate in the June 8, 2010 Primary Election, representing the 36th District. The Jeff Stone for State Senate 2010 committee (“Respondent Committee”) was the candidate controlled committee. At all relevant times, Respondent Joseph Kuebler (“Respondent Kuebler”) was the Treasurer for Respondent Committee.

The Respondent Committee was created on March 13, 2009, as a candidate controlled committee. During the period March 13, 2009, through June 30, 2010, Respondent Committee reported receiving contributions of approximately \$584,803 and making expenditures totaling approximately \$579,384.

The Respondents violated the requirements of the Political Reform Act (the “Act”)¹ by failing to file online campaign reports disclosing contributions of \$1,000 or more during the 90 day period before an election.

For the purposes of settlement, Respondents’ violations of the Act are stated as follows:

\$1,000 ONLINE REPORTS

- Count 1: Respondents Jeff Stone, Jeff Stone for State Senate 2010, and Treasurer Joseph Kuebler failed to file an online campaign report disclosing three contributions of \$1,000 or more, totaling \$5,900, with the Secretary of State, during the 90-day period before the June 8, 2010 Primary Election, received on or about April 6, 2010, due on or about April 7, 2010, in violation of Government Code section 85309, subd. (a).
- Count 2: Respondents Jeff Stone, Jeff Stone for State Senate 2010, and Treasurer Joseph Kuebler failed to file an online campaign report disclosing seven contributions of \$1,000 or more, totaling \$20,600, with the Secretary of State, during the 90-day period before the June 8, 2010 Primary Election, received on or about April 7, 2010, due on or about April 8, 2010, in violation of Government Code section 85309, subd. (a).

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

- Count 3: Respondents Jeff Stone, Jeff Stone for State Senate 2010, and Treasurer Joseph Kuebler failed to file an online campaign report disclosing three contributions of \$1,000 or more, totaling \$4,400, with the Secretary of State, during the 90-day period before the June 8, 2010 Primary Election, received on or about April 20, 2010, due on or about April 21, 2010, in violation of Government Code section 85309, subd. (a).
- Count 4: Respondents Jeff Stone, Jeff Stone for State Senate 2010, and Treasurer Joseph Kuebler failed to file an online campaign report disclosing four contributions of \$1,000 or more, totaling 11,800, with the Secretary of State, during the 90-day period before the June 8, 2010 Primary Election, received on or about April 27, 2010, due on or about April 28, 2010, in violation of Government Code section 85309, subd. (a).
- Count 5: Respondents Jeff Stone, Jeff Stone for State Senate 2010, and Treasurer Joseph Kuebler failed to file an online campaign report disclosing three contributions of \$1,000 or more, totaling \$9,502, with the Secretary of State, during the 90-day period before the June 8, 2010 Primary Election, received on or about April 28, 2010, due on or about April 29, 2010, in violation of Government Code section 85309, subd. (a).
- Count 6: Respondents Jeff Stone, Jeff Stone for State Senate 2010, and Treasurer Joseph Kuebler failed to file an online campaign report disclosing four contributions of \$1,000 or more, totaling \$12,300, with the Secretary of State, during the 90-day period before the June 8, 2010 Primary Election, received on or about April 29, 2010, due on or about April 30, 2010, in violation of Government Code section 85309, subd. (a).
- Count 7: Respondents Jeff Stone, Jeff Stone for State Senate 2010, and Treasurer Joseph Kuebler failed to file an online campaign report disclosing four contributions of \$1,000 or more, totaling \$9,650, with the Secretary of State, during the 90-day period before the June 8, 2010 Primary Election, received on or about May 3, 2010, due on or about May 4, 2010, in violation of Government Code section 85309, subd. (a).
- Count 8: Respondents Jeff Stone, Jeff Stone for State Senate 2010, and Treasurer Joseph Kuebler failed to file an online campaign report disclosing four contributions of \$1,000 or more, totaling \$9,900, with the Secretary of State, during the 90-day period before the June 8, 2010 Primary Election, received on or about May 11, 2010, due on or about May 12, 2010, in violation of Government Code section 85309, subd. (a).

SUMMARY OF THE LAW

Duty to File Periodic Campaign Statements and Reports

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore establishes a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

Section 82013, subdivision (a), defines a “committee” to include any person who receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as a “recipient committee.” Under Section 82016, a recipient committee controlled by a candidate is a “controlled committee.”

Duty to File Reports Online

In order to maximize the availability of information regarding campaign disclosure to the public, the Act requires any candidate, officeholder, committee, or other person who is required to file statements, reports, or other documents in connection with a state elective office to file them online or electronically when the total cumulative reportable amount of contributions received, expenditures made, loans made, or loans received is \$50,000 or more. (§ 84605, subd. (a).)

Once a person or entity is required to file online or electronically, the person or entity is required to file all subsequent reports online or electronically as well. (§ 84605, subd. (g).) Persons filing online or electronically are also required to continue to file required disclosure statements and reports in paper format, which continue to be the official filing for audit and other legal purposes until the Secretary of State determines the system is operating securely and effectively. (§ 84605, subd. (i).)

Duty to Report Contributions Received During the Election Cycle of \$1,000 or More

A candidate for elective state office who is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution of \$1,000 or more received during an election cycle. Those reports shall disclose the same information required by subdivision (a) of Section 84203 and shall be filed within 24 hours of receipt of the contribution. (§85309, subd. (a).) “Election cycle” for the purposes of Section 85309 means the period of time commencing 90 days prior to an election and ending on the date of the election. (§ 85204.)

Joint and Several Liability of Candidate and Treasurer

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, it is the duty of a candidate and the treasurer of his or her controlled committee to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A candidate and the treasurer of his or her controlled committee may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (See Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Respondent Stone was an unsuccessful candidate for the California State Senate in the June 8, 2010 Primary Election, representing the 36th District. Respondent Committee was the candidate controlled committee. At all relevant times, Respondent Kuebler was the Treasurer for Respondent Committee.

The Respondent Committee was created on March 13, 2009, as a candidate controlled committee. During the period March 13, 2009, through June 30, 2010, Respondent Committee reported receiving contributions of approximately \$584,803 and making expenditures totaling approximately \$579,384. Respondents exceeded the \$50,000 threshold and were required to file online campaign reports pursuant to Section 84605.

Respondents disclosed the contributions of \$1,000 or more received during the 90-day period before the June 8, 2010 Primary Election on or about June 2, 2010. Respondents state that Respondent Stone informed Respondent Kuebler's firm that the Respondent Committee had a filing requirement to disclose contributions of \$1,000 or more received during the 90-day period before the June 8, 2010 Primary Election. However, Respondent Kuebler's staff informed Respondent Stone that these filing requirements did not apply to the Respondent Committee. After a second phone call from Respondent Stone regarding this issue, Respondent Kuebler's firm realized that they mistakenly identified Respondent Committee as a non-electronic filer in the database. Upon learning of this error, all reports disclosing contributions of \$1,000 or more received during the 90-day period before the June 8, 2010 Primary Election were filed, on or about June 2, 2010.

Counts 1-8

Failure to Report Contributions of \$1,000 or More Online

During the 90-day period before the June 8, 2010 Primary Election, from March 8, 2010, through June 8, 2010, Respondents were required to disclose each contribution of \$1,000 or more in an online campaign report filed within 24 hours of receipt.

In this matter, Respondents failed to disclose 32 contributions of \$1,000 or more during this reporting period within 24 hours of receipt in eight separate online campaign reports, totaling \$84,052. The unreported contributions are shown in the following table, according to the count to which they correspond.

Count	Date Received	Contributor(s)	Amount
1	April 6, 2010	Nancy Cartwright Mel Elliot Neil Willner	\$3,900 \$1,000 \$1,000
2	April 7, 2010	Hanna Marital Trust Monteleone Meadows Pechanga Bank of Luiseno Indians TCM Group George Duggan Randall Lewis Fredrick W. Noble	\$3,900 \$3,900 \$3,900 \$1,000 \$3,000 \$3,900 \$1,000
3	April 20, 2010	Thomas P. D' Amico Mel Elliot Soros Mediterranean Grill	\$2,000 \$1,000 \$1,400
4	April 27, 2010	Michael Baybak and Co., Inc. Temecula Valley Vineyards Wine Road Vintners, LLC Kenneth Gerbino	\$1,000 \$3,900 \$3,900 \$3,000
5	April 28, 2010	In Sook Yoo Samuel Yoo Won Yoo	\$1,801 \$3,801 \$3,900
6	April 29, 2010	Diana Cosijn-Van Kalmthout Terri Kent-Ponte Mark A. McCaslin Peter Van Kalmthout	\$3,900 \$2,500 \$2,000 \$3,900
7	May 3, 2010	Forest City Commercial Mgt. Inc. Steve Q. Chapin Bill Johnson Patricia D. Johnson	\$1,000 \$1,100 \$3,900 \$3,650
8	May 11, 2010	Kenco Company Kenco Company Elizabeth Baybak Stephen Wheeler	\$3,900 \$1,100 \$3,900 \$1,000
Total:			\$84,052

By failing to file online campaign reports disclosing contributions of \$1,000 or more received during the election cycle, as set forth above, Respondents committed eight violations of Section 85309, subdivision (a).

CONCLUSION

This matter consists of eight counts, which carries a maximum possible administrative penalty of Forty Thousand Dollars (\$40,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

This matter involves multiple campaign reporting violations. The public harm inherent in these types of violations, where pertinent information is not disclosed before an election, is that the public is deprived of important information such as the sources and amounts of contributions to a campaign and the amounts expended by the campaign.

AGGRAVATING FACTORS

Respondents failed to file multiple campaign reports disclosing contributions received by the Respondent Committee. Additionally, a large amount of campaign activity should have been reported in online campaign statements.

MITIGATING FACTORS

Respondents filed all of the contributions of \$1,000 or more during the election cycle prior to contact from the Enforcement Division and prior to the June 8, 2010 Primary Election, on or about June 2, 2010. Respondents state that the failure to timely file the campaign reports resulted from an error made by Respondent Kuebler's firm. The Enforcement Division found no evidence that the reporting omissions in this matter were anything other than inadvertent. Additionally, Respondent Committee timely filed pre-election campaign statements disclosing these contributions.

COUNTS 1 – 8

With regard to the \$1,000 online reporting violations, the typical administrative penalty for failing to file online reports within 24 hours disclosing contributions of \$1,000 or more received during the election cycle have historically resulted in penalties in the mid to low range of the available penalties, depending on the facts of the case. In this matter, Respondents failed to report 32 contributions in eight separate online campaign election cycle reports, totaling \$84,052. Thus, a stipulated administrative penalty of \$2,000 per count is appropriate for these violations.

Accordingly, the facts and circumstances of this case justify a total stipulated administrative penalty of \$16,000.

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
CAMPAIGN STATEMENT VIOLATION**
(Streamlined Program)

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the campaign statement filing violation(s) described herein.

Respondents: San Diego County Otay Water District Board Member Larry Breitfelder	FPPC No. 11/104
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GOVERNMENT CODE SECTION(S) VIOLATED: ☐ 84200 ☒ 84206

DESCRIPTION OF VIOLATION: Failure to timely file a campaign statement.

<u>Statement</u>	<u>Reporting Period</u>	<u>Due Date</u>
Form 470	Calendar year 2010	August 2, 2010

The statement listed above has now been filed in conjunction with reaching this settlement.

MONETARY PENALTY: \$200	NUMBER OF COUNTS: 1
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
LARRY BREITFELDER

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The Complainant, Executive Director of the Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, and following, and 2 California Code of Regulations sections 18361.1 through 18361.9, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the face of this document, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER**

Complainant, Executive Director of the Fair Political Practices Commission, Roman G. Porter, and Respondent(s) hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the reporting violation(s) described herein.

FPPC NO. 11/207

RESPONDENT(S): BROWN FOR COUNCIL 2010 COMMITTEE, DAVID BROWN, AND WAYNE IVEY
(CITY OF MARINA CANDIDATE)

GOVERNMENT CODE SECTIONS VIOLATED: 84200

DESCRIPTION OF VIOLATION: FAILURE TO FILE SEMIANNUAL CAMPAIGN STATEMENT (FORM 460)

REPORT DUE DATES: JANUARY 31, 2011

MONETARY PENALTY: \$200 NUMBER OF COUNTS: 1

STATEMENT BY RESPONDENT(S):

I acknowledge that the violation(s) of the Political Reform Act described above and on Exhibit 1 attached have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
BY:

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The complainant, Executive Director of the Fair Political Practices Commission, and respondent(s), both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of each Respondent named herein.

Each Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under Cal. Gov. Code Sections 83115.5, 11500, *et seq.* and 2 Cal. Code Of Regulations Section 18361, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that each Respondent has violated the Political Reform Act as described herein.

Each Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a fine in the amount specified on the face of this document, and a check or money order in said amount, payable to the "General Fund of the State of California," is submitted herewith to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to each Respondent. Each Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Exhibit I

Case: 11/202

Respondent(s): BROWN FOR COUNCIL 2010 COMMITTEE, DAVID BROWN, AND WAYNE IVEY

These statements have now been filed in connection with this violation.

Counts	Type of Statement	Reporting Period
1	Semiannual	October 19, 2010 through December 31, 2010
		Penalty: \$200

FAIR POLITICAL PRACTICES COMMISSION STIPULATION, DECISION AND ORDER

Complainant, Executive Director of the Fair Political Practices Commission, Roman G. Porter, and Respondent(s) hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the reporting violation(s) described herein.

FPPC NO. **11/053**

RESPONDENT(S): **SERGIO CALDERON**
FRIENDS OF CALDERON FOR DIRECTOR (WATER REPLENISHMENT
DISTRICT BOARD MEMBER)

GOVERNMENT CODE SECTION VIOLATED: 84200.5

DESCRIPTION OF VIOLATION: FAILURE TO FILE PRE-ELECTION CAMPAIGN STATEMENT (FORM 460)

REPORT DUE DATES: OCTOBER 21, 2010

MONETARY PENALTY: \$400 ***NUMBER OF COUNTS: 1***

STATEMENT BY RESPONDENT(S):

I acknowledge that the violation(s) of the Political Reform Act described above and on Exhibit 1 attached have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
BY: _____

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above stipulation and recommend its approval.

Dated: _____

ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____

ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The complainant, Executive Director of the Fair Political Practices Commission, and respondent(s), both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of each Respondent named herein.

Each Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under Cal. Gov. Code Sections 83115.5, 11500, *et seq.* and 2 Cal. Code Of Regulations Section 18361, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that each Respondent has violated the Political Reform Act as described herein.

Each Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a fine in the amount specified on the face of this document, and a check or money order in said amount, payable to the "General Fund of the State of California," is submitted herewith to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to each Respondent. Each Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Exhibit I

Case: 11/053

Respondent(s): SERGIO CALDERON
FRIENDS OF CALDERON FOR DIRECTOR 2010

These statements have now been filed in connection with this violation.

Counts	Type of Statement	Reporting Period
1	Pre-election	October 1, 2010 through October 16, 2010
		Penalty: \$400

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
CAMPAIGN STATEMENT VIOLATION
(Streamlined Program)**

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the campaign statement filing violation(s) described herein.

Respondents: Georges Marciano; Georges Marciano for Governor 2010; and Georges Marciano, Treasurer	FPPC No. 10/353
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GOVERNMENT CODE SECTION(S) VIOLATED: ☒ 84200 ☒ 84605

DESCRIPTION OF VIOLATION: Failure to timely file campaign statements with the County of Los Angeles and Secretary of State, both paper filings and electronic filings

<u>Statements</u>	<u>Reporting Period</u>	<u>Due Date</u>
Three Semiannuals	July 1, 2009, through December 31, 2009	February 1, 2010
Three Semiannuals	January 1, 2010, through June 30, 2010	August 2, 2010

The statements listed above have now been filed in conjunction with reaching this settlement.

MONETARY PENALTY: \$1,200	NUMBER OF COUNTS: 6
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a check made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
GEORGES MARCIANO, INDIVIDUALLY AND ON BEHALF OF GEORGES MARCIANO FOR GOVERNOR 2010

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
**ANN RAVEL, CHAIR
FAIR POLITICAL PRACTICES COMMISSION**

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The Complainant, Executive Director of the Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, and following, and 2 California Code of Regulations sections 18361.1 through 18361.9, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the face of this document, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER**

Complainant, Executive Director of the Fair Political Practices Commission, Roman G. Porter, and Respondent(s) hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the reporting violation(s) described herein.

FPPC NO. 09/233

**RESPONDENT(S): JOSEPH MESSINA, BOARD MEMBER, WM. S. HART HIGH SCHOOL
COMMITTEE TO ELECT JOSEPH MESSINA
R.J. KELLY, TREASURER**

GOVERNMENT CODE SECTION VIOLATED: 84200

**DESCRIPTION OF VIOLATION: FAILURE TO FILE PRE-ELECTION AND SEMIANNUAL
CAMPAIGN STATEMENTS (FORMS 460)**

**REPORT DUE DATES: JANUARY 31, 2008
JANUARY 31, 2009**

MONETARY PENALTY: \$400 NUMBER OF COUNTS: 2

STATEMENT BY RESPONDENT(S):

I acknowledge that the violation(s) of the Political Reform Act described above and on Exhibit 1 attached have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
JOSEPH MESSINA

Dated: _____ X _____
R.J. KELLY

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The complainant, Executive Director of the Fair Political Practices Commission, and respondent(s), both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of each Respondent named herein.

Each Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under Cal. Gov. Code Sections 83115.5, 11500, *et seq.* and 2 Cal. Code Of Regulations Section 18361, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that each Respondent has violated the Political Reform Act as described herein.

Each Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a fine in the amount specified on the face of this document, and a check or money order in said amount, payable to the "General Fund of the State of California," is submitted herewith to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to each Respondent. Each Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Exhibit I

Case: **090233**

Respondent(s): **Joseph Messina**
 Committee to Elect Joseph Messina
 R.J. Kelly, Treasurer

All statements have now been filed in connection with these violations.

Counts	Type of Statement	Reporting Period
1	Semiannual	October 21, 2007, through December 31, 2007
2	Semiannual	July 1, 2008, through December 31, 2008
		Penalty: \$400

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
CAMPAIGN STATEMENT VIOLATION**
(Streamlined Program)

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the campaign statement filing violation(s) described herein.

Respondents: Ron Smith, Friends of Ron Smith, and Ron Smith, Treasurer	FPPC No. 10/1050
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GOVERNMENT CODE SECTION(S) VIOLATED: ☒ **84200**

DESCRIPTION OF VIOLATION: Failure to timely file a campaign statement. The statement referenced below has now been filed.

<u>Statement</u>	<u>Reporting Period</u>	<u>Due Date</u>
Semiannual	January 1, 2010, through June 30, 2010	August 2, 2010

MONETARY PENALTY: \$200	NUMBER OF COUNTS: 1
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X
RON SMITH, INDIVIDUALLY AND ON BEHALF OF FRIENDS OF RON SMITH

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
**ANN RAVEL, CHAIR
FAIR POLITICAL PRACTICES COMMISSION**

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The Complainant, Executive Director of the Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, and following, and 2 California Code of Regulations sections 18361.1 through 18361.9, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the face of this document, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

1 GARY S. WINUK
Chief of Enforcement
2 NEAL P. BUCKNELL
Senior Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11 In the Matter of:

12 LOUIE MARTINEZ,

13 Respondent.
14

FPPC No. 09/261

STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
17 and Respondent Louie Martinez hereby agree that this Stipulation will be submitted for consideration by
18 the Fair Political Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
20 matter and to reach a final disposition without the necessity of holding an additional administrative
21 hearing to determine the liability of Respondent.

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondent Louie Martinez, in
2 his capacity as Senior Project Manager for the City of Irvine:

- 3 (i) accepted gifts in excess of the annual gift limit in violation of Government Code section
4 89503, subdivision (c) (2 counts); and
5 (ii) used his official position to influence a governmental decision in which he had reason to
6 know that he had a financial interest, in violation of Government Code section 87100 (1
7 count).

8 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein,
9 is a true and accurate summary of the facts in this matter.

10 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and
11 Respondent agrees to the Commission imposing upon him an administrative penalty in the amount of
12 \$8,000. A cashier's check or money order from Respondent totaling said amount, made payable to the
13 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
14 administrative penalty and shall be held by the State of California until the Commission issues its
15 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
16 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
17 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
18 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
19 agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the

20 ///

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25 ///

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27 ///

28 ///

Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

Dated: _____

Louie Martinez, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of Louie Martinez," FPPC No. 09/261, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Louie Martinez (“Respondent”) was a Senior Project Manager for the City of Irvine.

Under the Political Reform Act (the “Act”)¹, public officials, including designated employees of local government agencies, are prohibited from accepting gifts from a single source in excess of certain annual gift limits. Also, under the Act, public officials are prohibited from making, participating in making, using or attempting to use their official positions to influence any governmental decisions in which they have a financial interest.

For purposes of this Stipulation, Respondent’s violations of the Act are set forth as follows:

COUNT 1: In approximately October 2007, Respondent Louie Martinez accepted an over-the-limit gift from Artistic Maintenance, Inc. in violation of Section 89503, subdivision (c). The gift was in the form of home landscaping services, which were discounted more than \$1,000 solely on account of Respondent’s official status. At the time, the annual gift limit for gifts from a single source was \$390.

COUNT 2: In approximately July 2008, Respondent Louie Martinez accepted an over-the-limit gift from Artistic Maintenance, Inc. in violation of Section 89503, subdivision (c). The gift was in the form of home landscaping services, which were discounted more than \$2,000 solely on account of Respondent’s official status. At the time, the annual gift limit for gifts from a single source was \$390.

COUNT 3: In approximately April or May 2008, Respondent Louie Martinez, in his capacity as Senior Project Manager for the City of Irvine, used his official position to influence a governmental decision in which he had reason to know that he had a financial interest, in violation of Section 87100. Specifically, he inspected Civic Center landscaping work performed by Artistic Maintenance, Inc. under contract with the City of Irvine, and based upon this inspection, he approved an invoice for payment of approximately \$86,000 to Artistic Maintenance, Inc.

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violations.

Definition of Gift

"Gift" includes "a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." (Section 82028, subd. (a).)

Prohibition Against Accepting Gifts in Excess of Gift Limit

No designated employee of a state or local government agency may accept gifts from any single source in any calendar year with a total value of more than \$390 if the employee would be required to report the receipt of income or gifts from that source on his statement of economic interests. (Section 89503, subd. (c); Regulation 18940.2.)

"Designated employee" means any officer, employee, member, or consultant of any agency whose position with the agency is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. (Section 82019, subd. (a)(3).)

Conflicts of Interest

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, "public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001, subd. (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

² The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official's participation was legally required—are not applicable to this case.

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include an employee of a local government agency.

Second, the official must make, participate in making, or attempt to use his official position to influence a governmental decision. (Section 87100 and Regulation 18700.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) A public official has a financial interest in any donor of a gift or gifts aggregating \$390 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (c); Regulation 18940.2.)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Regulation 18704.)

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103.) In the case of an economic interest that is the directly involved donor of a gift, the financial effect is presumed to be material. (Regulation 18705.4, subd. (a).)

Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends upon the facts of each particular case. (Regulation 18706, subd. (b).)

SUMMARY OF THE FACTS

As stated above, at all relevant times, Respondent Louie Martinez was a Senior Project Manager for the City of Irvine. (This was a position that he held for approximately four years. Prior to this, he was a landscape maintenance supervisor for the City of Irvine for a number of years.)

Pursuant to Respondent’s agency conflict of interest code, he was a designated employee within the meaning of Section 82019, subdivision (a)(3), and he was required to file statements of economic interests.

When Respondent’s employer became aware of the facts giving rise to this case, Respondent retired prior to a full investigation.

Counts 1 and 2: Accepting Gifts in Excess of Annual Gift Limit

In approximately October 2007, Respondent accepted an over-the-limit gift from Artistic Maintenance, Inc. (“Artistic”) in the form of home landscaping services, which were discounted

more than \$1,000 solely on account of Respondent's official status. At the time, the annual gift limit for gifts from a single source was \$390, and Respondent was required to report the receipt of income or gifts from Artistic on his statement of economic interests.

Also, in approximately July 2008, Respondent accepted an over-the-limit gift from Artistic Maintenance, Inc. ("Artistic") in the form of home landscaping services, which were discounted more than \$2,000 solely on account of Respondent's official status. At the time, the annual gift limit for gifts from a single source was \$390, and Respondent was required to report the receipt of income or gifts from Artistic on his statement of economic interests.

Neither discount was available to the public through Artistic's regular course of business.

By accepting over-the-limit gifts as described above, Respondent committed two violations of Section 89503, subdivision (c).

Count 3: Conflict of Interest

In approximately April or May 2008, Respondent inspected Civic Center landscaping work performed by Artistic Maintenance, Inc. under contract with the City of Irvine, and based upon this inspection, he approved an invoice for payment of approximately \$86,000 to Artistic Maintenance, Inc.

As an employee of the City of Irvine, Respondent was a public official. His inspection and subsequent approval of the invoice for payment of approximately \$86,000 to Artistic amounted to using his official position to influence a governmental decision in which he had reason to know that he had a financial interest.³

As stated in Count 1, during the 12 months prior to Respondent's approval of the invoice for payment to Artistic, Respondent accepted an over-the-limit gift from Artistic in the form of discounted home landscaping services. Accordingly, Respondent had an economic interest in Artistic when he approved the invoice for payment to Artistic in the approximate amount of \$86,000 in connection with the Civic Center landscaping work. Artistic was directly involved in the governmental decision because payment to Artistic was the subject of the decision, and it was reasonably foreseeable that Respondent's approval would have a material financial effect on Artistic.

In acting as described above, Respondent committed one violation of Section 87100.

CONCLUSION

This matter consists of three counts of violating the Act, which carry a maximum administrative penalty of \$15,000.

³ Although Respondent did not have final authority with respect to issuing the check, his approval/recommendation was given great weight, and he could not recall ever being overruled by his superiors.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1)-(6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Making a governmental decision in which an official has a financial interest is one of the more serious violations of the Act because it may create the appearance that a governmental decision was made on the basis of a public official's financial interest, especially when the financial interest is the donor of over-the-limit gifts.

Administrative penalties for violations of the Act vary depending upon the specific facts of each case. In this case, the following aggravating and mitigating factors are present.

Factors in Aggravation

Respondent should have reported both of the over-the-limit gifts from Artistic on his statements of economic interests, but he did not do so.

When Respondent approached Artistic about home landscaping services for his personal residence, he knew that Artistic was a commercial landscaper and that normally Artistic would not do landscaping on an individual basis for homeowners. Also, Respondent had reason to believe that Artistic only charged him "city prices" for the home landscaping services that were provided to him. Additionally, the Artistic invoice for the home landscaping services that are the subject of Count 1 reflected "N/C" for \$765 of construction supervisor time and "N/C" for \$315 of dump truck time.

During the 12 months that followed the gift that is the subject of Count 1, Respondent approved several dozen invoices for payments to Artistic totaling hundreds of thousands of

dollars. This approval took the form of Respondent initialing Artistic invoices, and he was never overruled by his superiors. Respondent has stated that he did not personally inspect the work performed by Artistic in connection with these payments; rather, he relied upon inspections performed by subordinate lead technicians.

Factors in Mitigation

Respondent cooperated with the Enforcement Division of the Fair Political Practices Commission during all phases of the investigation and by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held.

Investigation did not reveal any evidence of bribery or extortion.

Respondent has stated that he did not understand that the discounted home landscaping services were a gift because he paid what he was invoiced (approximately \$1,845 for the first job and approximately \$7,675 for the second job). Also, Respondent has stated that he used Artistic and several other contractors to perform work throughout the city for various projects, as he had done for years without issue, and Artistic was not favored more than any other contractor. Additionally, Respondent has stated that he did not influence whether or not Artistic was awarded any contracts with the city.

Respondent does not have a history of violating the Act.

Penalty

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of an agreed upon penalty of \$2,000 per count for Counts 1 and 2, and \$4,000 for Count 3, for a total penalty in the amount of \$8,000.

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
STATEMENT OF ECONOMIC INTERESTS VIOLATION**
(Streamlined Program)

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the Statement of Economic Interests filing violation(s) described herein.

Respondent: Marilyn Anderson	FPPC No. 10/824
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Position: South Pasadena Finance Committee Member
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Jurisdiction: City of South Pasadena

GOVERNMENT CODE SECTION(S) VIOLATED: ☒ 87300 ☐ 87202 ☐ 87203 ☐ 87204

DESCRIPTION OF VIOLATION: Failure to timely file statement(s) of economic interests

Statement	Reporting Period	Due Date
Assuming Office	August 19, 2008 through August 19, 2009	September 18, 2009
2009 Annual	January 1, 2009 through December 31, 2009	April 1, 2010

All statements listed above have now been filed in conjunction with reaching this settlement.

MONETARY PENALTY: \$800	NUMBER OF COUNTS: 2 (Tier 2)
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
MARILYN ANDERSON

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The Complainant, Executive Director of the Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, and following, and 2 California Code of Regulations sections 18361.1 through 18361.9, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the face of this document, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
STATEMENT OF ECONOMIC INTERESTS VIOLATION**
(Streamlined Program)

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the Statement of Economic Interests filing violation(s) described herein.

Respondent: Peter Arellano	FPPC No. 11/016
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Position: Member, South County Regional Wastewater Authority

Jurisdiction: County of Santa Clara
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GOVERNMENT CODE SECTION(S) VIOLATED: ☒ 87300 ☐ 87202 ☐ 87203 ☐ 87204

DESCRIPTION OF VIOLATION: Failure to timely file statement(s) of economic interests

Statement	Reporting Period	Due Date
Annual	January 1, 2009 through December 31, 2009	April 1, 2010

All statement(s) listed above have now been filed in conjunction with reaching this settlement.

MONETARY PENALTY: \$400	NUMBER OF COUNTS: 1 (Tier 2)
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a cashier's check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
PETER ARELLANO

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The Complainant, Executive Director of the Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, and following, and 2 California Code of Regulations sections 18361.1 through 18361.9, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the face of this document, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
STATEMENT OF ECONOMIC INTERESTS VIOLATION
(Streamlined Program)

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the Statement of Economic Interests filing violation(s) described herein.

Respondent: Rod Dowse	FPPC No. 10/986
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Position: Board Member; Grenada Irrigation District

Jurisdiction: County of Siskiyou

GOVERNMENT CODE SECTION(S) VIOLATED: ☒ 87300 ☐ 87202 ☐ 87203 ☐ 87204

DESCRIPTION OF VIOLATION: Failure to timely file statement(s) of economic interests

Statement	Reporting Period	Due Date
2009 Annual	January 1, 2009 through December 31, 2009	April 1, 2010

All statements listed above have now been filed in conjunction with reaching this settlement.

MONETARY PENALTY: \$400	NUMBER OF COUNTS: 1 (Tier 2)
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
ROD DOWSE

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____

ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____

ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The Complainant, Executive Director of the Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, and following, and 2 California Code of Regulations sections 18361.1 through 18361.9, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the face of this document, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
STATEMENT OF ECONOMIC INTERESTS VIOLATION**
(Streamlined Program)

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the Statement of Economic Interests filing violation(s) described herein.

Respondent: Jon Messick	FPPC No.: 090580
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Position: Planning Commissioner
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Jurisdiction: County of Yuba

GOVERNMENT CODE SECTION(S) VIOLATED: ☐ 87300 ☐ 87202 ☒ 87203 ☐ 87204

DESCRIPTION OF VIOLATION: Failure to timely file statement(s) of economic interests

Statement	Reporting Period	Due Date
2008 Annual	January 1, 2008 – December 31, 2008	April 1, 2009

All statements listed above have now been filed in conjunction with reaching this settlement

MONETARY PENALTY: \$ 200	NUMBER OF COUNTS: 1
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a cashier's check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ **X** _____
JON MESSICK

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The Complainant, Executive Director of the Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, and following, and 2 California Code of Regulations sections 18361.1 through 18361.9, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the face of this document, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
STATEMENT OF ECONOMIC INTERESTS VIOLATION**
(Streamlined Program)

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the Statement of Economic Interests filing violation(s) described herein.

Respondent: Erin O'Brien	FPPC No. 11/017
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Position: Member, Social Services Advisory Commission
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Jurisdiction: County of Santa Clara
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GOVERNMENT CODE SECTION(S) VIOLATED: ☒ 87300 ☐ 87202 ☐ 87203 ☐ 87204

DESCRIPTION OF VIOLATION: Failure to timely file statement(s) of economic interests

Statement	Reporting Period	Due Date
Annual	January 1, 2009 through December 31, 2009	April 1, 2010

All statement(s) listed above have now been filed in conjunction with reaching this settlement.

MONETARY PENALTY: \$200	NUMBER OF COUNTS: 1
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a cashier's check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
ERIN O'BRIEN

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The Complainant, Executive Director of the Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, and following, and 2 California Code of Regulations sections 18361.1 through 18361.9, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the face of this document, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
STATEMENT OF ECONOMIC INTERESTS VIOLATION**
(Streamlined Program)

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the Statement of Economic Interests filing violation(s) described herein.

Respondent: Gale Simmons	FPPC No. 11/010
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Position: Member, Child Abuse Council
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Jurisdiction: County of Santa Clara
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GOVERNMENT CODE SECTION(S) VIOLATED: ☒ 87300 ☐ 87202 ☐ 87203 ☐ 87204

DESCRIPTION OF VIOLATION: Failure to timely file statement(s) of economic interests

Statement	Reporting Period	Due Date
Annual	January 1, 2009 through December 31, 2009	April 1, 2010

All statement(s) listed above have now been filed in conjunction with reaching this settlement.

MONETARY PENALTY: \$200	NUMBER OF COUNTS: 1
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a cashier's check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____
GALE SIMMONS

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The Complainant, Executive Director of the Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, and following, and 2 California Code of Regulations sections 18361.1 through 18361.9, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the face of this document, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
STATEMENT OF ECONOMIC INTERESTS VIOLATION**
(Streamlined Program)

Complainant, Executive Director of the Fair Political Practices Commission and Respondent hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the Statement of Economic Interests filing violation(s) described herein.

Respondent: Julie Tumamait-Stenslie	FPPC No.: 10/1104
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Position: Native American Heritage Commissioner
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Jurisdiction: State of California
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GOVERNMENT CODE SECTION(S) VIOLATED: ☒ 87300 ☐ 87202 ☐ 87203 ☐ 87204

DESCRIPTION OF VIOLATION: Failure to timely file statement(s) of economic interests

Statement	Reporting Period	Due Date
2009 Annual	January 1, 2009 through December 31, 2009	April 1, 2010

All statements listed above have now been filed in conjunction with reaching this settlement

MONETARY PENALTY: \$ 200	NUMBER OF COUNTS: 1 (Tier #1)
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STATEMENT BY RESPONDENT:

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a cashier's check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ **X** _____
JULIE TUMAMAIT-STENSLIE

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above Stipulation and recommend its approval.

Dated: _____
ROMAN G. PORTER, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing Stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
ANN RAVEL, CHAIR

FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF RESPONDENT'S RIGHTS

The complainant, Executive Director of the Fair Political Practices Commission, and respondent(s), both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of each Respondent named herein.

Each Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under Cal. Gov. Code sections 83115.5, 11500, *et seq.* and 2 Cal. Code of Regulations section 18361, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that each Respondent has violated the Political Reform Act as described herein.

Each Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a fine in the amount specified on the face of this document, and a check or money order in said amount, payable to the "General Fund of the State of California," is submitted herewith to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to each Respondent. Each Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

GARY S. WINUK
Chief of Enforcement
FAIR POLITICAL PRACTICES COMMISSION

428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660
Facsimile: (916) 322-1932

Attorney for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of) FPPC No. 09/807
)
)
FRANK J. MOLINA, and STRATEGIC) STIPULATION, DECISION and
SOLUTIONS ADVISORS;) ORDER
)
)
Respondents.)
)

Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission, and Respondents Frank J. Molina and Strategic Solutions Advisors, hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents.

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Section 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 Respondents Frank J. Molina and Strategic Solutions Advisors, stipulate and agree that they
5 violated the Political Reform Act by failing to file lobbying firm disclosure reports, pursuant to
6 Government Code Section 86114 and failing to file lobbyist disclosure reports, in violation of
7 Government Code Sections 86113. (12 counts), as described in Exhibit 1. Exhibit 1 is attached hereto
8 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary
9 of the facts in this matter.

10 Respondents Frank J. Molina and Strategic Solutions Advisors, agree to the issuance of the
11 Decision and Order, which is attached hereto. Respondents Frank J. Molina and Strategic Solutions
12 Advisors, also agree to the Commission imposing upon it an administrative penalty in the amount of
13 Thirty Thousand Dollars (\$30,000).

14 A cashier's check from Respondents totaling Thirty Thousand Dollars (\$30,000), made payable
15 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
16 administrative penalty, to be held by the State of California until the Commission issues its Decision and
17 Order regarding this matter. The parties agree that in the event the Commission refuses to accept this
18 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
19 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
20 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the
21 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
22 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
23 disqualified because of prior consideration of this Stipulation.

1
2
3 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

4
5
6 Dated: _____

Frank J. Molina, individually and on behalf of Strategic
Solutions Advisors

7
8
9 **DECISION AND ORDER**

10 The foregoing Stipulation of the parties “In the Matter of Frank J. Molina and Strategic Solutions
11 Advisors, FPPC No. 09/807,” including all attached exhibits, is hereby accepted as the final Decision
12 and Order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

13
14 IT IS SO ORDERED.

15
16 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Frank J. Molina (“Respondent Molina”) became the owner of Strategic Solutions Advisors (“Respondent SSA”), a lobbying firm in January of 2007 after having worked in the California State Legislature from 1998 through 2006. Strategic Solutions Advisors had several clients, including the San Manuel Band of Mission Indians, The Soboba Band of Luiseno Indians, the Santa Ynez Band of Chumash Indians, the Tule River Indian Tribe and Deloitte Consulting LLP.

Respondent SSA employed Respondent Molina as its sole lobbyist. Respondent SSA received payments for lobbying services of over \$840,000 for the period from January 2007 through December 2009.

Despite qualifying as a lobbying firm and lobbyist under the Political Reform Act (the “Act”)¹, Respondents did not timely file quarterly reporting statements as either a lobbying firm or lobbyist as required from January 2007 through December 2009.

For the purposes of this Stipulation, Respondents’ violations are as follows:

- COUNT 1:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the January 1, 2007 through March 31, 2007 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 2:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the April 1, 2007 through June 30, 2007 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 3:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the July 1, 2007 through September 30, 2007 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 4:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the October 1, 2007 through December 31, 2007 reporting period, in violation of Government Code Sections 86113 and 86114.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

- COUNT 5:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the January 1, 2008 through March 31, 2008 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 6:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the April 1, 2008 through June 30, 2008 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 7:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the July 1, 2008 through September 30, 2008 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 8:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the October 1, 2008 through December 31, 2008 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 9:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the January 1, 2009 through March 31, 2009 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 10:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the April 1, 2009 through June 30, 2009 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 11:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the July 1, 2009 through September 30, 2009 reporting period, in violation of Government Code Sections 86113 and 86114.
- COUNT 12:** Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the October 1, 2009 through December 31, 2009 reporting period, in violation of Government Code Sections 86113 and 86114.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (b), is that the activities of lobbyists should be regulated and their finances disclosed in order that improper

influences will not be directed at public officials. The Act therefore establishes a lobbying firm and lobbyist reporting system designed to accomplish this purpose of disclosure.

Lobbying Firm

“Lobbying firm” means any business entity, including an individual contract lobbyist, which meets either of the following criteria: (1) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action on behalf of any other person, and any partner, owner, officer, or employee of the business entity is a lobbyist. (2) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing legislative or administrative action. Government Code 82038.5.

Lobbyist

“Lobbyist” means any individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. Government Code Section 82039.

Duty to File Lobbyist Reports

A lobbyist shall complete and verify a periodic report which contains: (1) A report of all activity expenses by the lobbyist during the reporting period. A lobbyist shall provide the original of his or her periodic report to his or her lobbyist employer or lobbying firm within two weeks following the end of each calendar quarter. Government Code Section 86113

Duty to File Lobbying Firm Reports

Lobbying firms shall file periodic reports containing all of the following: (1) The full name, address, and telephone number of the lobbying firm. (2) The full name, business address, and telephone number of each person who contracted with the lobbying firm for lobbying services, a description of the specific lobbying interests of the person, and the total payments, including fees and the reimbursement of expenses, received from the person for lobbying services during the reporting period. (3) The total amount of payments received for lobbying services during the period. (4) A periodic report completed and verified by

each lobbyist in the lobbying firm pursuant to Section 86113. (5) Each activity expense incurred by the lobbying firm including those reimbursed by a person who contracts with the lobbying firm for lobbying services. A total of all activity expenses of the lobbying firm and all of its lobbyists shall be included. Government Code Section 86114

Reports required by Sections 86114 and 86116 shall be filed during the month following each calendar quarter. The period covered shall be from the first day of January of each new biennial legislative session through the last day of the calendar quarter prior to the month during which the report is filed, and except that the period covered shall not include any information reported in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire legislative session to date. Government Code Section 86117

SUMMARY OF THE FACTS

Respondent Frank J. Molina (“Respondent Molina”) became the owner of Strategic Solutions Advisors (“Respondent SSA”), a lobbying firm in January of 2007 after having worked in the California State Legislature from 1998 through 2006. Strategic Solutions Advisors had several clients, including the San Manuel Band of Mission Indians, Soboba Band of Luiseno Indians, the Santa Ynez Band of Chumash Indians, the Tule River Indian Tribe and Deloitte Consulting LLP.

Respondent SSA employed Respondent Molina as its sole lobbyist. Respondent SSA received payments for lobbying services of over \$840,000 for the period from January 2007 through December 2009.

Despite qualifying as a lobbying firm and lobbyist under the Political Reform Act (the “Act”), Respondents did not file quarterly reporting statements as either a lobbying firm or lobbyist as required from January 2007 through December 2009.

COUNTS 1-12

(Failure to File Required Lobbying Firm and Lobbyist Reports)

Respondents Frank J. Molina and Strategic Solutions Advisors failed to timely file quarterly lobbyist and lobbying firm reports for the January 1, 2007 through December 31, 2009 reporting periods, in violation of Government Code Sections 86113 and 86114.

CONCLUSION

This matter consists of twelve counts of violating the Act, carrying a maximum administrative penalty of \$60,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

For Counts 1-12, failing to file lobbyist and lobbying firm disclosure statements is a serious violation of the Act as it violates one of its central purposes, that the activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials. The public harm inherent in these violations is that the public is deprived of important and timely information from Respondents regarding the amounts and nature of lobbying activity. The typical administrative penalty for failing to file lobbyist and lobbying firm statements has been in the low to middle range of penalties.

FACTORS IN AGGRAVATION

In this matter, Respondents failed to file lobbying firm and lobbyist reports for a period of three years and failed to file until the non-filing was brought to the attention of the Respondents by the FPPC. Additionally, Respondents were not very cooperative with the investigation, causing significant delays in obtaining information and compliance with their filing obligations.

Respondents also failed to disclose over \$840,000 worth of lobbying payments and activity, depriving the public of information on a significant amount of lobbying activity. Additionally, Respondents were Responsible by contract and oral agreement to file lobbying employer reports for several of their clients, but failed to file these reports either, leaving no record of the lobbying activity.

Lastly, Respondent Molina worked in the Legislature for nearly nine years, including as the Chief of Staff to a Member of the Legislature. Thus, he was not an unsophisticated party.

FACTORS IN MITIGATION

Respondents have no history of violating the Act.

PENALTY

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Thirty Thousand Dollars (\$30,000), Two Thousand Five Hundred Dollars (\$2,500) each for Counts 1 – 12.

* * * * *

Amend 2 cal. Code Regs. Section 18360 to read:

§ 18360. Complaints.

(a) Pursuant to Section 83115, a person may submit a sworn complaint to the Commission or the Commission may on its own initiative investigate an alleged violation of the Act.

(b) A sworn complaint shall be filed on a form made available by the Commission and shall comply with all of the following requirements:

(1) Be in writing.

(2) Identify the person or persons who allegedly violated the Act and, if known, the specific provision or provisions of the Act allegedly violated.

(3) Describe with as much particularity as possible the facts constituting each alleged violation.

(4) Be based on facts of which the complainant has personal knowledge, or based on information and belief supported by documentary or other evidence included or described in the complaint.

(5) Include or describe with as much particularity as possible evidence or means of obtaining evidence in support of the complaint.

(6) Include names and addresses of potential witnesses, if known.

(7) Be signed by the complainant under penalty of perjury.

(c) This regulation does not prevent a person from complaining by telephone to the Commission or requesting anonymity when doing so, but only a sworn complaint filed

1 substantially in conformity with subdivision (b) entitles the complainant to the procedural rights
2 set forth in Section 83115 and in this regulation.

3 (d) Prior to each regularly scheduled Commission meeting, the Commission staff shall
4 provide each member of the Commission a report with the information specified in paragraphs
5 (1) and (2):

6 (1) With respect to sworn complaints received since the last report:

7 (A) The name of the complainant unless the complainant is a confidential informant.

8 (B) The name of the person or persons complained against.

9 (C) The date the sworn complaint was received.

10 (D) The alleged violation or violations of the Act.

11 (2) With respect to a staff-initiated investigation commenced since the last report:

12 (A) The name of the person who is the subject of the investigation.

13 (B) The date the staff initiated the investigation.

14 (C) The alleged violation or violations of the Act.

15 (3) The Commission staff shall also provide additional information a Commissioner
16 requests to that Commissioner, including a copy of a sworn complaint, unless the Executive
17 Director determines, in consultation with the Chief of Enforcement, the information will
18 compromise the impartiality of the Commissioner on matters alleged in a complaint.

19 (e) The Chief of Enforcement, with the authorization of the Executive Director, shall
20 provide information about sworn complaints and staff-initiated investigations to other
21 governmental agencies that have an official and specific interest in the information, and make
22 every effort to cooperate with other governmental agencies in a position to assist the

Commission with an investigation. However, the Commission may decline to disclose the identity of a confidential informant.

(f) The Executive Director shall take the following actions with respect to complaints:

(1) Notify the complainant in writing within 14 days of receipt of a sworn complaint that the Commission will do one or more of the following:

(A) Investigate the allegations of the complaint, in which case the response shall inform the complainant the commencement of an investigation only indicates the complaint alleges a violation of the Act, and the culpability of the person complained against, if any, has not been determined.

(B) Refer the complaint to another governmental agency.

(C) Take no action on the complaint because, on the basis of the information provided, the Commission does not appear to have jurisdiction to investigate, but the complainant may provide additional information.

(D) Take no action on the complaint because the allegations of the complaint, absent the Commission receiving additional information, do not warrant the Commission's further action for the reason stated.

(E) Take additional time to evaluate the complaint to determine whether an investigation should ensue and provide an appropriate explanation for the delay. This information shall be provided within successive intervals of no more than 14 days per interval until the Commission notifies the complainant it has acted on the complaint under subparagraphs (A) through (D).

(2) Ensure that Commission staff does not disclose information relating to the contents of the 14-day notification required by subdivision (f)(1), to anyone other than Commission staff and

1 those listed in subdivision (e) of this Regulation, except for purposes of investigation of the
2 initial complaint, until at least 5 business days have passed from the time the 14-day notification
3 letter is sent by the Commission to the complainant and the subject of the complaint.

4 ~~(2)~~ (3) Provide the subject of the sworn complaint with a copy of the complaint within
5 three business days of receipt, ~~any~~ Any additional correspondence sent to the complainant
6 pursuant to subdivision (f)(1) ~~when it is sent to the complainant~~ must be provided to the subject
7 of the complaint at the same time it is provided to the complainant. However, upon the
8 recommendation of the Chief of Enforcement and provided withholding the information is
9 otherwise consistent with law, the Executive Director may decline to provide a copy of, or may
10 redact information from, the complaint or the correspondence sent to the complainant. If all or
11 part of a complaint or correspondence is withheld from the subject of the complaint, what is
12 withheld may not be disclosed to another person except to a law enforcement agency on a
13 confidential basis. If the sworn complaint is otherwise made public, a copy of the complaint shall
14 be promptly sent to the subject of the complaint.

15 ~~(3)~~ (4) Inform the subject of a staff-initiated investigation of the alleged violation or
16 violations not later than the time the information is provided to the Commissioners- and ensure
17 that Commission staff does not disclose information relating to the staff-initiated investigation,
18 to anyone other than Commission staff and those listed in subdivision (e) of this Regulation,
19 except for purposes of investigation, until at least 5 business days have passed from the time the
20 subject of the investigation is informed or sent notification of the investigation. However, upon
21 the recommendation of the Chief of Enforcement that providing the information would
22 jeopardize the investigation, the Executive Director may decline to inform the subject of the

1 complaint. If the Executive Director makes this determination, he or she shall prepare a
2 memorandum setting forth justification for the declination, which shall be retained in the
3 enforcement case file. If the subject of the complaint is not informed of the complaint, the
4 existence of the complaint may not be disclosed except to a law enforcement agency on a
5 confidential basis.

6 (g) If the Commission investigates the allegations of a sworn complaint, the Executive
7 Director shall notify the complainant in writing of the following:

8 (1) The time, date, and location of any public hearing or public meeting on the complaint
9 scheduled to be heard by an administrative law judge or the Commission.

10 (2) The date, time, and location of any public proceeding on the complaint scheduled to
11 be heard by a court.

12 (3) The Commission's or a court's final resolution of the complaint.

13 (h) If the person who filed the sworn complaint disagrees with the response sent pursuant
14 to subdivision (f)(1)(C) or (D), he or she may submit in writing, within 20 days of receipt of the
15 response, a request for reconsideration that shall be directed to the Executive Director, who shall
16 forward the correspondence to each member of the Commission for consideration.

17 Note: Authority cited: Section 83112, Government Code. Reference: Section 83115,
18 Government Code.

Fair Political Practices Commission

MEMORANDUM

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery and Rotunda

From: Sukhi K Brar, Commission Counsel
John Wallace, Acting General Counsel

Re: Proposed Amendments to Regulation 18360 - Notification to Subjects of Enforcement Investigations

Date: May 26, 2011

I. Introduction

The Commission is seeking to implement a procedure that would provide notice to those who become the subject of an Enforcement investigation that they are being investigated by the Commission before such information is released to the general public.

II. Background and Current Law

Sworn Complaints:

Regulation 18360 currently requires the Commission to provide a notice within 14 days (“14-day notice”) to any complainant who submits a sworn complaint to the Commission with regard to an Enforcement matter. The notice must provide information as to whether or not the Commission has chosen to investigate the matter, refer the matter to another agency, take no action or take additional time to evaluate the complaint.

Regulation 18360 requires the subject of a sworn complaint be provided with a copy of the complaint within 3 business days of the date the complaint is received by the Commission. The Commission is also required to provide the subject of the complaint with a copy of the 14-day notice if a complainant is provided with the 14-day notice, though Regulation 18360 does not clearly specify when this is to be done. In addition, Regulation 18360 does not impose restrictions on releasing information contained in the 14-day notice to the public prior to the time the Commission sends the subject of the complaint a copy of the 14 day notice.

Staff Initiated Investigations:

In addition to sworn complaints submitted to the Commission from members of the public, Enforcement Division also proactively initiates investigations. With respect to Enforcement Division, or “staff-initiated” investigations, Regulation 18360 states that the subject of the investigation must be provided notice of the investigation at the time notice is provided to

the FPPC's Commissioners. The Regulation does not impose restrictions on communicating information about staff-initiated investigations to individuals, other than the complainant and the Commissioners, prior to the time the subject of the investigation is informed of the investigation.

III. Regulatory Changes

These amendments seek to require that no member of the Commission's staff be allowed to communicate the Commission's decision to investigate a matter, refer a matter to another agency, take no action or take additional time to evaluate the complaint to anyone other than members of Commission staff, other governmental agencies that have an official and specific interest in the information, or to individuals for purposes of investigation of the complaint until at least five days have passed from the time the 14-day notice has been sent to the complainant and the subject of the complaint. This proposed period is intended to ensure that the Commission treats all participants within an enforcement action fairly and it is appropriate that the subject of a complaint be given adequate notice of the contents of the 14-day notice prior to it being disseminated.

The amendments also seek to clarify that 14-day notices must be sent to the complainant and the subject of a complaint contemporaneously.

**Fair Political Practices Commission
Memorandum**

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery and Rotunda
From: John W. Wallace, Assistant General Counsel
Subject: Regulatory Plan for the Remainder of 2011 and 2012
Date: May 25, 2011

I. INTRODUCTION

This memorandum provides an update to the Commission on the proposed regulatory plan for the remainder of 2011 and 2012. Historically, staff has provided a list of recommendations for the Commission's regulatory priorities each Calendar Year. Generally, these memoranda were considered in November or December of the prior calendar year. The first discussion of the regulatory plan is generally in narrative form, while at a subsequent meeting, the proposed regulations will be provided to the Commission on a tentative regulatory calendar that will reflect which items require interested persons' meetings, pre-notice hearings, and adoption hearings.

In order to establish this list of priorities, regulatory ideas are solicited from the public and from Commission staff in all of the Commission divisions. As you are aware, two Interested Persons' meetings have already been held in Sacramento (April 14 and April 21), which have resulted in a major portion of the ideas set out in this memorandum. Once the proposals are collected, legal staff meets with executive staff for their review and guidance as to what projects are placed on the final calendar. The final memorandum contains those items that the executive staff determines are the most urgent and would be manageable in light of the current fiscal and staff constraints. Historically, the rulemaking plan allows for quarterly review and revision by the Commission.¹

Due to the task force regulations started at the end of last year, this is the first opportunity staff has had to restart the regulation calendar process for 2011 and to inform the Commission of the current regulatory ideas under consideration. Staff will return with a more detailed calendar at the next available meeting, which will also encompass regulation ideas for 2012.

¹ The updates are necessary for a variety of reasons, new issues arise during the calendar year and might become new regulations projects, new legislation might also require regulatory work, problems might delay the timeline of already calendared items, and other priorities might arise that limit the staff availability to work on regulations (such as new litigation for example).

The current process employed to develop specific regulations² is similar to the process used to develop the calendar.

- Legal division staff will be assigned each regulation project.
- After initial research, an Interested Persons' meeting will be scheduled. Depending on the complexity of the regulation or packet of regulations, multiple Interested Persons' meetings may be held.
- Staff will then prepare draft language that will be presented to other legal staff and the Executive Division for comment and changes.
- Once language has been settled upon, the regulation will be noticed through the Office of Administrative Law (OAL) as required under the Administrative Procedures Act (APA) before the Commission is legally able to take action.³ Staff's notice to the public is intended to ensure the public will be aware of the issues and options the commission will consider.⁴ This allows the public to provide informed comment during the notice period and to make an informed choice whether to appear and comment on the items at the actual Commission meeting. The statutory notice procedure also requires that the notice is sent to interested persons. We satisfy this requirement via our listserv email system. We also publish the materials on our website.
- With satisfaction of these legal notice requirements, the next step is to prepare the regulation and a memorandum for Commission consideration. In order for the Commission to legally consider the item at a Commission Meeting under the Bagley Keene open meeting law, the Commission must publically agendize the item 10 days in advance of the meeting date. Currently, we are also preparing and publishing a preview agenda that is published approximately 30 days in advance of Commission meeting so that the public has an earlier idea of what the different items may be considered at the meeting. This preview notice will be updated as the agenda changes.
- In the past, we have also utilized what we refer to as prenotice hearings. These hearings were held prior to the regulation being formerly noticed, gave the public and the Commission a first opportunity to look at, and comment on the regulation prior to the actual adoption hearing. However, in most respects, the Interested Persons' meetings have

² Of course this is the process we endeavor to follow. The reality is that there are an unlimited number of circumstances in which this process does not apply -- emergency regulations, and nonsubstantive changes, just to name a couple.

³ Unlike other agencies, the Commission is not subject to the current APA which governs the regulatory action of state agencies, but rather is subject to the 1974 version of the APA. Therefore Commission regulations are subject to only a 30-day notice period. However, since publication of notice still occurs in OAL's Notice Bulletin (along with all other state regulations), we must still provide the notice and regulation to OAL well in advance of the publication date (45 to 60 days in advance of the Commission Meeting).

⁴ The actual notice is published in the notice bulletin, not the regulation. The regulatory language is made available from the Commission on its website

taken the place of the prenotice hearings and therefore absent unusual circumstances prenotice hearings will not be scheduled.

- Finally, once the Commission adopts the regulation it is then sent back to OAL for finalization. It is the Commission's practice, however, that the regulation becomes the official policy of the agency upon adoption.

II. NEW PROPOSED PROJECTS

The proposed areas of focus include refinement and improvement of campaign regulations, conflict-of-interest regulations, and enforcement and gift regulations. In addition, the Commission will need to factor in regulations needed to implement legislation early next year. As of the writing of this memorandum, there are currently 25 bills being tracked due to potential impacts on the Act. However, none of the regulatory projects that may be needed to implement these bills can be calendared until the legislation is signed by the Governor. Historically, new legislation has resulted in several regulatory amendments or adoptions each year.

A more detailed discussion of specific regulations selected for the calendar will occur at a future Commission Meeting.



FAIR POLITICAL PRACTICES COMMISSION

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To: Chairwoman Ravel and Commissioners Eskovitz, Garrett, Montgomery, and Rotunda

From: Tara Stock, Legislative Coordinator

Subject: Legislative Report

Date: May 25, 2011

Since the April Commission hearing, an additional bill, AB 873 (Furutani), was amended to substantively amend the Political Reform Act (Act). Summaries of all proposals and positions as recommended by staff are below. Given the fiscal concerns of the Commission, staff is recommending an “oppose” position for any measure that would have a significant fiscal impact on the Commission which is unmet by the measure. The last day for each house to pass a bill introduced in that house is June 3, 2011.

Current Legislation – Positions Not Yet Approved by Commission

1) SB 18 (Blakeslee)

Gifts from Lobbying Entities

Existing Law

A lobbyist or a lobbying firm may not make gifts aggregating more than \$10 in a calendar month to an elected state officer, a candidate for elective state office, or a legislative official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer. No elected state officer or candidate for elective state office may accept gifts from any single source, including a lobbyist employer, in any calendar year aggregating more than \$420.

Proposed Law

This bill would prohibit lobbyists, lobbying firms, and lobbyist employers from making specified gifts (e.g., sporting event and concert tickets) to an elected state officer or to a member of the official’s immediate family. The bill would also prohibit an elected state officer from accepting the specified gifts.

Status: Referred to Senate Appropriations “suspense” file. Hearing is scheduled for May 26, 2011.

Estimated Fiscal Impact: \$210,000

Staff Recommended Position: Oppose

2) SB 19 (Blakeslee)

Campaign Telephone Calls

Existing Law

Candidates and committees that use campaign funds to make 500 or more phone calls in support of or opposition to a candidate or ballot measure must disclose during the phone call that the candidate or committee authorized or paid for the call. Committees may not contract with phone bank vendors that

do not disclose this information. This requirement does not apply to calls that are personally made by the candidate, campaign manager, or volunteers.

Proposed Law

This bill would require the Secretary of State to establish, manage, and maintain a California Political Robocall Do Not Call List, which shall contain the names and phone numbers of registered voters who have elected to be on the list. It would prohibit any person from making an “automated campaign telephone call” to any person on the list. “Automated campaign telephone call” is defined as an automated telephone call made to a live person or voicemail or other answering machine device using an automated dialing-announcing device, that advocates support of, or opposition to, a candidate.

Status: Referred to Senate Appropriations “suspense” file. Hearing is scheduled for May 26, 2011.

Estimated Fiscal Impact: \$190,000

Staff Recommended Position: Oppose

3) SB 46 (Correa)

Disclosure of Government Compensation

Existing Law

The Act requires public officials specified in Government Code Section 87200 to file annual Statements of Economic Interests (SEIs). In addition, each state and local government agency is required to adopt a conflict-of-interest code, which includes a list of “designated employees” who must also file SEIs.

Proposed Law

This bill would require individuals who are required to file a SEI to include, as part of that filing, a compensation disclosure form. The compensation disclosure form would require specified information related to government “compensation” received by that individual in the preceding calendar year. As an alternative, an agency may compile the specified information for each individual and post the information on its website. The State Controller’s office would be required to adopt emergency regulations, including the format of the disclosure form, to implement the bill.

Status: Referred to Senate Appropriations “suspense” file. Hearing is scheduled for May 26, 2011.

Estimated Fiscal Impact: \$190,000

Staff Recommended Position: Oppose

4) SB 398 (Hernandez)

Placements Agents

Existing Law

The Act defines “placement agent” as an individual hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, or on behalf of another placement agent, who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a state public retirement system in California or an investment vehicle, either directly or indirectly. “External manager” is defined as a person who is seeking to be, or is, retained by the retirement board of a public pension or retirement system to manage a portfolio of securities or other assets for compensation, or a person who is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets and who offers or sells, or has offered or sold, securities to a board.

Proposed Law

This bill would define a “placement agent” to mean a person directly or indirectly hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager *or an investment fund managed by an external manager* and who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale to a board or investment vehicle either the investment management services of the external manager or an

ownership interest in an investment fund managed by the external manager. The bill amends the definition of “external manager” to mean a person who is seeking to be, or is, retained by a board or an investment vehicle to manage a portfolio of securities or other assets for compensation, or a person who manages an investment fund, as defined, and who offers or sells, or has offered or sold, an ownership interest in the investment fund to a board or an investment vehicle.

Status: Assembly.

Estimated Fiscal Impact: Minor/absorbable

Staff Recommended Position: Support

This is a clean-up measure intended to provide clarity within the Act’s lobbyist provisions.

5) SB 415 (Wright)

Enforcement Investigations

Existing Law

The Commission is charged with the responsibility to investigate, upon the sworn complaint of any person or upon its own initiative, possible violations of the Act. Within 14 days after receipt of a complaint, the Commission must notify in writing the person who made the complaint of the action, if any, the Commission plans to take. If no decision is made within 14 days, the person who made the complaint shall be notified of the reasons for the delay. Regulation 18360 requires the Commission to provide the subject of a sworn complaint with a copy of the complaint within three business days of receipt, as well as copies of any correspondence sent to the person who filed the complaint. The regulation requires the Commission to inform the subject of a staff-initiated investigation of the alleged violation(s) not later than the time the information is provided to the Commissioners.

Proposed Law

This bill would require the Commission to notify any person who is the subject of an investigation of that investigation at least 24 hours before the Commission makes any information regarding the investigation available to the public.

Status: Senate Floor.

Estimated Fiscal Impact: Minor/absorbable

Staff Recommended Position: Neutral

At the June 9, 2011, hearing, staff will present proposed amendments to Regulation 18360, which will ensure that the Commission does not disclose information about an investigation to the public until at least 5 days have passed from the time the subject of the investigation is notified or sent notification of the investigation.

6) SB 439 (Negrete McLeod)

Gift Limits for CalPERS and STRS

Existing Law

The Act requires specified public officials to report the receipt of gifts aggregating \$50 or more from a single source in a calendar year and prohibits the receipt of gifts exceeding \$420 from a single source in a calendar year.

Proposed Law

This bill would prohibit any board member and any designated employee of the Public Employees’ Retirement System (CalPERS) or the State Teachers’ Retirement System (STRS) from accepting gifts totaling more than \$50 in a calendar year from persons who have secured a contract with, or submitted a contract proposal to, CalPERS or STRS within the previous five years.

Status: Assembly.

Estimated Fiscal Impact: Minor/absorbable

Staff Recommended Position: Neutral

The Act includes gift limits that apply consistently to all public officials. Amending the Act to include different rules for one segment of public officials will make the rules more complex and more difficult to comply with and interpret.

7) SB 488 (Correa)

Slate Mailers

Existing Law

The Act requires slate mail organizations or committees primarily formed to support or oppose one or more ballot measures that send a slate mailer to disclose specified information, including the name and address of the organization or committee on each piece of mail and on at least one insert (if included) and other specified information.

Proposed Law

This bill would provide that, if a slate mailer organization sends a mailer that displays a logo, insignia, emblem, or trademark that is identical or substantially similar to that of any governmental agency, or of a nongovernmental organization that represents law enforcement, firefighting, emergency medical, or other public safety personnel, the slate mailer organization would be required to obtain the express written consent of the agency or organization. In addition, if a slate mailer organization sends a mailer that identifies itself or its source material as representing a nongovernmental organization with a name that would reasonably be understood to imply that the organization is composed of, or affiliated with, law enforcement, firefighting, emergency medical, or other public safety personnel, the mailer would be required to disclose the total number of members in the organization identified and the number of members working or living within the county in which the mailer is being delivered.

Status: Senate Floor.

Estimated Fiscal Impact: Minor/absorbable

Staff Recommended Position: Neutral

The Act includes disclosure requirements for slate mailers. Requiring specific agencies and organizations to include additional information will make the rules more complex and more difficult to comply with and interpret. The most difficult challenges for the Commission would be determining when a logo, insignia, emblem or trademark is similar to an agency's or organization's logo and identifying other types of organizations that would trigger the new requirements.

8) SB 593 (Gaines)

Tahoe Regional Planning Agency

Existing Law

Public officials of state and local government agencies are required to comply with the Political Reform Act.

Proposed Law

This bill would require each of the California members of the Tahoe Regional Planning Agency, a bi-state agency created by Federal Compact, to comply with the Political Reform Act and file Statements of Economic Interests with the Commission.

Status: Assembly.

Estimated Fiscal Impact: Minor/absorbable

Staff Recommended Position: Support

This measure furthers the Act's efforts to reduce or eliminate conflicts of interest.

9) SB 801 (Kehoe)

Statements of Economic Interests – Appointees to State Boards and Commissions

Existing Law

The Act requires elected state, county, and city officers, as well as members of state licensing or regulatory agencies to file their original statements of economic interests (SEIs) with their respective agency and the filing official for the agency must make and retain a copy and forward the original to the Commission. Most other individuals required to file SEIs file with their respective agency or the agency's code reviewing body, as provided by the agency's conflict-of-interest code, and the SEIs are retained by the respective agency.

Proposed Law

This bill would require persons appointed to a state board, commission, or similar multimember body of the state to file their SEIs with the respective board, commission, or body, which would be required to retain the original and forward a copy to the Commission.

Status: Assembly Elections and Redistricting Committee.

Estimated Fiscal Impact: \$60,000

Staff Recommended Position: Support if amended.

Staff is working with the author's office on some technical issues with the current language. Staff has suggested amendments that would clarify that the Commission continues to receive originals from (and act as the filing officer for) specified appointees. In addition, a suggestion was made that would eliminate the filing of unnecessary copies with certain agencies.

10) AB 873 (Furutani)

Post-Employment Restrictions – CalPERS and CalSTRS

Existing Law

The Political Reform Act places certain restrictions on the post-governmental activity of officials who have left state service. The one-year ban prohibits certain officials, for one year after leaving state service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. The permanent ban on "switching sides" prohibits former state officials from working on proceedings that they participated in while working for the state. The ban prohibits appearances and communications to represent any other person, as well as aiding, advising, counseling, consulting or assisting in representing any other person, for compensation, before any state administrative agency in a proceeding involving specific parties (such as a lawsuit, a hearing before an administrative law judge, or a state contract) if the official previously participated in the proceeding.

Proposed Law

This bill would expand on the current post-governmental activities by prohibiting: 1) members of the Board of Public Employees' Retirement System (CalPERS) or the State Teachers' Retirement System (STRS) and specified officers and employees of CalPERS and STRS for a period of four years after leaving office from representing another person before CalPERS or STRS for the purpose of influencing administrative or legislative action or influencing an action involving a permit, license, grant, or contract, or the sale or purchase of goods or property; 2) members of the Board of CalPERS or STRS and specified officers and employees from assisting a business entity within two years after leaving office to perform, implement, or execute a contract of greater than \$10,000,000 with that business entity; and, 3) members of the Board of CalPERS or STRS and specified officers and employees for a period of ten years after leaving office from accepting compensation for providing services as a placement agent.

Status: Senate Rules.

Estimated Fiscal Impact: \$135,000 (first year); \$90,000 (ongoing)

Staff Recommended Position: Oppose

11) AB 1146 (Norby)

Cash Contributions and Expenditures

Existing Law

Campaign statements are required to include specified information, including the total amount of contributions received and expenditures made. If the cumulative amount of contributions received from a person or expenditures made to a person is \$100 or more, specified information is required to be disclosed on a campaign statement. No person shall make an anonymous contribution totaling \$100 or more.

Proposed Law

This bill would increase the threshold for itemizing contributions and expenditures from \$100 to \$200. The threshold for anonymous contributions is increased from \$100 to \$200.

Status: Assembly Floor.

Estimated Fiscal Impact: Minor/absorbable

Staff Recommended Position: Neutral

Increasing the disclosure threshold simplifies the campaign reporting requirements.

12) AB 1241 (Norby)

Government Code Section 84308 – Definition of Officer

Existing Law

Section 84308: 1) prohibits an officer (elected or appointed) of an agency from accepting, soliciting or directing a contribution of more than \$250 from a party or participant with a matter pending before the agency involving a license, permit or other entitlement; 2) prohibits an officer from making, participating in making or attempting to influence the decision in a proceeding involving a license, permit or other entitlement for use if the officer received more than \$250 from the party or participant in the 12 months before the proceeding; and, 3) requires disclosure of the receipt of any such contribution on the record of the proceeding. Certain agencies, including courts, agencies in the judicial branch, local government agencies whose members are directly elected by voters, the Legislature, the Board of Equalization and constitutional officers, are exempt from Section 84308.

Proposed Law

This bill would exclude elected members of an agency from the definition of “officer” so that only appointed members of an agency would be subject to the provisions of Section 84308.

Status: Assembly Floor.

Estimated Fiscal Impact: Minor/absorbable

Staff Recommended Position: Oppose

This provision does not further the Act’s efforts to reduce or eliminate conflicts of interest.

Current Legislation – Positions Approved by Commission

13) SB 50 (Correa)

Conflicts of Interest Disqualification – High Speed Rail Authority Members

Existing Law

A public official who holds an office specified in Government Code Section 87200, with the exception of a member of the Legislature, who has a financial interest in a decision must comply with the following disqualification procedures: 1) Publicly identify the financial interest; 2) Recuse himself/herself from discussing and voting on the matter; and 3) Leave the room until after the discussion and vote.

Proposed Law

This bill would add members of the High Speed Rail Authority to the list of specified offices in Government Code Section 87200 who must publicly identify a financial interest giving rise to a conflict of interest or potential conflict of interest, and recuse themselves accordingly.

Status: Assembly Elections and Redistricting Committee.

Estimated Fiscal Impact: Minor/absorbable

Commission Position: Support

14) AB 41 (Hill)

Conflicts of Interest Disqualification – High Speed Rail Authority Members

Existing Law

A public official who holds an office specified in Government Code Section 87200, with the exception of a member of the Legislature, who has a financial interest in a decision must comply with the following disqualification procedures: 1) Publicly identify the financial interest; 2) Recuse himself/herself from discussing and voting on the matter; and 3) Leave the room until after the discussion and vote.

Proposed Law

This bill is identical to SB 50 (Correa), above. It would add members of the High Speed Rail Authority to the list of specified offices in Government Code Section 87200 who must publicly identify a financial interest giving rise to a conflict of interest or potential conflict of interest, and recuse themselves accordingly.

Status: Senate Elections, Reapportionment & Constitutional Amendments Committee.

Estimated Fiscal Impact: Minor/absorbable

Commission Position: Support

15) AB 65 (Gatto)

Ballot Pamphlet

Existing Law

The Act contains provisions that set forth the required contents of state ballot pamphlets and the format in which the items must appear. The information currently required includes a copy of the ballot measure, a copy of the specific constitutional or statutory provision that the measure would repeal or revise, and an analysis of the measure prepared by the Legislative Analyst.

Proposed Law

This bill would require the Secretary of State to include in the statewide ballot pamphlet a list of the five highest contributors of \$50,000 or more to each primarily formed committee supporting or opposing each state measure, as well as the total amount of their contributions, as of 110 days before an election.

Status: Senate Elections, Reapportionment & Constitutional Amendments Committee. Hearing is scheduled for June 7, 2011.

Estimated Fiscal Impact: Minor/absorbable

Commission Position: Support

16) AB 182 (Davis)

Statements of Economic Interests – Electronic Filing

Existing Law

The Counties of Los Angeles, Merced, Orange, Santa Clara, Stanislaus, and Ventura and the City of Long Beach may permit the electronic filing of Statements of Economic Interests required to be filed by public officials designated in each participating agency's conflict-of-interest code. This pilot program shall be completed by January 1, 2012.

Proposed Law

This bill extends the pilot project to continue through December 31, 2012. Assuming the pilot project is successful, the bill also *permits all* filing officers, as of January 1, 2013, to accept the electronic filing of Statements of Economic Interests.

Status: Senate Elections, Reapportionment & Constitutional Amendments Committee.

Estimated Fiscal Impact: Minor/absorbable

Commission Position: Support

Current Legislation – “Watch” Bills

Staff is not requesting the Commission adopt positions on the following bills at this time, but staff will continue to track the bills.

17) SB 265 (La Malfa)

Committees

This bill in its current form makes nonsubstantive changes to Government Code Section 82013, which defines “committee.” There is no substantive language yet.

Status: Senate Rules.

18) SB 334 (DeSaulnier)

Ballot Pamphlet

Existing Law

The Act contains provisions that set forth the required contents of state ballot pamphlets and the format in which the items must appear. The information currently required includes a copy of the ballot measure, a copy of the specific constitutional or statutory provision that the measure would repeal or revise, and an analysis of the measure prepared by the Legislative Analyst.

Proposed Law

This bill would require the Secretary of State to include in the statewide ballot pamphlet a list of the five highest contributors of \$50,000 or more to each primarily formed committee supporting or opposing each state measure, as well as the total amount of their contributions, as of 110 days before an election, or a later date in the case of a special election if the Secretary of State determines the 110-day provision is infeasible. The bill also requires a printed statement in the ballot pamphlet that reads substantially similar to the following: “To learn who contributed to committees supporting or opposing each state measure, access the Secretary of State’s Internet Web site at [Internet Web site address].”

Status: Referred to Senate Appropriations “suspense” file. While this measure amends the Act, it does not directly affect the Commission.

19) AB 71 (Huber)

Lobbying Interests

Existing Law

The Secretary of State maintains an online a directory of lobbyists, lobbying firms, and lobbyist employers. Lobbyist employers are required to file periodic reports disclosing, among other information, their lobbying interests.

Proposed Law

This bill would require the Secretary of State, within 90 days following the end of each calendar quarter, to post on its website a list of all reported lobbying interests and a list of the bill numbers these interests lobbied for or against.

Status: Referred to Assembly Appropriations “suspense” file. While this measure amends the Act, it does not directly affect the Commission.

20) AB 447 (Huffman and Fletcher)

Comprehensive PRA Reform

This comprehensive reform bill contains several changes to the Act. The current version contains the following proposals, among others: 1) the development of a statewide electronic filing system; 2) requirement for committee treasurers to complete an online certification course, which shall be renewed every two years; 3) monthly filing of campaign statements for specified committees in even-numbered years; 4) quarterly filing of campaign statements in odd-numbered years; 5) requiring one preelection statement (16-day report) instead of two preelection statements; 6) eliminating certain special reports; 7) extending the 24-hour late reporting period from 16 days to 90 days; 8) requiring elected officers, candidates, and committees to file a copy of each campaign statement with the elections official of any jurisdiction in which the filer makes expenditures of \$25,000 or more during the reporting period; and, 9) increasing late filing penalties.

Status: Assembly Appropriations Committee. Author requested the bill be taken off the hearing calendar. This is now a two-year bill.

21) AB 785 (Mendoza)

Conflicts of Interest

Existing Law

A public official is prohibited from making, participating in making, or attempting to influence a governmental decision in which the official or a member of the official's "immediate family" has a financial interest. "Immediate family" is defined as the official's spouse or domestic partner and dependent children.

Proposed Law

This bill would provide, for purposes of conflicts of interest, that a public official who is an elected or appointed member of a government agency has a financial interest in a decision if an "immediate family member" has a financial interest in the decision. This bill defines "immediate family member" for purposes of this section as the public official's spouse or domestic partner, children, parents, siblings, and the spouse or domestic partner of a child, parent, or sibling. It also specifies that the following individuals have a financial interest in a decision of a state or local government agency: 1) a person who is acting as an agent for or otherwise representing any other person before a state or local government agency; and 2) a person who is a director, officer, or partner of a business entity that would experience a reasonably foreseeable material financial effect due to the decision.

Status: Missed the deadline to be heard by the Assembly Elections and Redistricting Committee. This is now a two-year bill.

22) AB 860 (Jones and Mansoor)

Corporation and Union Influence Reduction Act

Existing Law

The Political Reform Act regulates campaign finance by imposing certain restrictions on candidates for elective offices, chiefly in the form of contribution limits and disclosure requirements.

Proposed Law

This bill would prohibit: 1) corporations and labor unions from making contributions to candidates for elective office or to committees or other entities that would use the contributions to fund a candidate or candidate-controlled committee; 2) a government contractor from making a contribution to an elected officer if the officer is in a position to award a government contract to such contractor; and, 3) a corporation, labor union, government contractor, or government employer from deducting from an employee's compensation money to be used for political purposes.

Status: Missed the deadline to be heard by the Assembly Elections and Redistricting Committee. This is now a two-year bill.

23) AB 1021 (Gordon)

Ballot Pamphlet

Existing Law

The Act contains provisions that set forth the required contents of state ballot pamphlets and the format in which the items must appear. The information currently required includes a copy of the ballot measure, a copy of the specific constitutional or statutory provision that the measure would repeal or revise, and an analysis (including a fiscal analysis) of the measure prepared by the Legislative Analyst.

Proposed Law

This bill would require that, if a fiscal analysis by the Legislative Analyst determines that a measure would establish a new or expanded program costing more than \$1,000,000 in any year without providing new revenues or eliminating existing programs to offset those costs, specified language be included in the ballot pamphlet advising that the proposed measure does not include sufficient funding to pay the cost of the measure.

Status: Assembly Floor. While this measure amends the Act, it does not directly affect the Commission.

24) AB 1148 (Brownley)

Advertisement Disclosure

Existing Law

The Act requires slate mailers to disclose the name and address of the slate mailer organization, or primarily formed ballot measure committee, sending the mailer on each piece of mail and on at least one insert if included. A slate mailer must designate any candidate or measure that has paid to appear with an asterisk. The Act also includes various disclosure requirements for mass mailing, broadcast, and telephone advertisements.

Proposed Law

This bill would require a candidate or ballot measure appearing in a slate mailer be designated by an asterisk, if the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures that sends the mailer, received a payment to include the candidate or ballot measure in the slate mailer. In addition, the bill would impose very stringent disclosure and format rules for campaign advertisements, including: 1) an approval statement for any radio or television advertisement authorized by a candidate (or agent) expressly advocating the election or defeat of a candidate, or soliciting contributions; 2) an approval statement for any radio or television advertisement by or at the behest of a political party, which must be made in a representative's voice with his or her photo/video appearing in a television advertisement; 3) a "stand by your ad" statement, identification of the individual paying for an advertisement, list of top five contributors, and the committee's website, for broadcast, mass mailing, or online advertisements supporting or opposing a candidate or ballot measure, if paid for by an independent expenditure.

Status: Missed the deadline to be heard by the Assembly Elections and Redistricting Committee. This is now a two-year bill.

25) AB 1413 (Assembly Elections Committee)

Campaign Statements

Existing Law

Campaign statements shall be open for public inspection and reproduction from 9:00 a.m. to 5:00 p.m. on the Saturday preceding a statewide primary or statewide general election in the offices of the Secretary of State, Registrar-Recorder of Los Angeles County, Registrar of Voters of San Diego County, and Registrar of Voters of San Diego County, and Registrar of Voters of the City and County of San Francisco.

Proposed Law

The bill deletes the requirement for Los Angeles, San Diego and San Francisco County offices to be open on the Saturday before a statewide election. Last year, AB 1181 (Huber) was approved by the Legislature and signed by the Governor. Among other provisions, AB 1181 eliminated the requirement for statewide officeholders, candidates for statewide office, and certain other statewide campaign committees to file a copy of all campaign reports with the Registrars of Voters in Los Angeles and San Francisco counties. As a result, these counties no longer receive paper copies of these campaign reports, and will not be able to provide that information to voters. Furthermore, given the increased availability of these campaign reports online, the counties have reported that it is uncommon for voters to come to the office of the registrar of voters on the Saturday before a statewide election to view or obtain copies of campaign statements.

Status: Senate (passed Assembly). This measure amends the Act to conform with changes made by recent legislation.

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL

No. 18

Introduced by Senator Blakeslee

December 6, 2010

An act to amend Section 86203 of, and to add Section 89504 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Blakeslee. Political Reform Act of 1974: gifts.

The Political Reform Act of 1974 regulates the receipt of gifts by public officials, including Members of the Legislature, and also regulates the activities of members of the lobbying industry, including lobbyist employers. *Existing law prohibits certain public officials from receiving gifts in excess of a specified dollar amount from a single source on an annual basis.*

~~This bill would state the intent of the Legislature to enact legislation that would further limit the ability of special interest groups, including lobbyist employers, to give gifts to Members of the Legislature.~~

This bill would prohibit a lobbyist, lobbying firm, or lobbying employer from making to an elected state official, and an elected state official from receiving from a lobbyist, lobbying firm, or lobbying employer, specified gifts, regardless of the value of the gift.

Existing law makes a willful violation of the Political Reform Act of 1974 a misdemeanor. Because this bill would create a new crime or expand the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: ~~no~~yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 86203 of the Government Code is*
2 *amended to read:*

3 86203. (a) It shall be unlawful for a lobbyist, or lobbying firm,
4 to make gifts to one person aggregating more than ten dollars (\$10)
5 in a calendar month, or to act as an agent or intermediary in the
6 making of any gift, or to arrange for the making of any gift by any
7 other person.

8 (b) *It shall be unlawful for a lobbyist, lobbying firm, or lobbyist*
9 *employer to give to a person holding elective state office or to a*
10 *member of that officeholder's immediate family, from the date the*
11 *officeholder is elected until he or she vacates the office, any of the*
12 *following gifts:*

13 (1) *Theme park tickets.*

14 (2) *Sporting event tickets.*

15 (3) *Theater and concert tickets.*

16 (4) *Racetrack tickets.*

17 (5) *Spa treatments, and other services of a personal nature.*

18 (6) *Golf, skiing, or fishing trips, and other recreational outings*
19 *or vacations.*

20 (7) *Gift cards.*

21 SEC. 2. *Section 89504 is added to the Government Code, to*
22 *read:*

23 89504. (a) *No person holding elective state office, from the*
24 *date of his or her election to the date he or she vacates office, shall*
25 *accept as a gift from a lobbyist, lobbying firm, or lobbyist*
26 *employer, any of the following:*

1 (1) *Theme park tickets.*

2 (2) *Sporting event tickets.*

3 (3) *Theater and concert tickets.*

4 (4) *Racetrack tickets.*

5 (5) *Spa treatments, or other services of a personal nature.*

6 (6) *Golf, skiing, or fishing trips, and other recreational outings*
7 *or vacations.*

8 (7) *Gift cards.*

9 (b) *For purposes of this section, “gift” has the same meaning*
10 *as defined in Section 86201.*

11 *SEC. 3. No reimbursement is required by this act pursuant to*
12 *Section 6 of Article XIII B of the California Constitution because*
13 *the only costs that may be incurred by a local agency or school*
14 *district will be incurred because this act creates a new crime or*
15 *infraction, eliminates a crime or infraction, or changes the penalty*
16 *for a crime or infraction, within the meaning of Section 17556 of*
17 *the Government Code, or changes the definition of a crime within*
18 *the meaning of Section 6 of Article XIII B of the California*
19 *Constitution.*

20 *SEC. 4. The Legislature finds and declares that this bill furthers*
21 *the purposes of the Political Reform Act of 1974 within the meaning*
22 *of subdivision (a) of Section 81012 of the Government Code.*

23 ~~SECTION 1. (a) The Legislature finds and declares that the~~
24 ~~public has expressed its disapproval of the practice whereby special~~
25 ~~interest groups provide gifts, including tickets to sporting events,~~
26 ~~rounds of golf, spa treatments, and other recreational activities,~~
27 ~~for the purpose of gaining access to, and influence with, Members~~
28 ~~of the Legislature.~~

29 ~~(b) Therefore, it is the intent of the Legislature to enact~~
30 ~~legislation that will limit the ability of special interest groups,~~
31 ~~including lobbyist employers, to give gifts to Members of the~~
32 ~~Legislature.~~

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 19

Introduced by Senator Blakeslee

December 6, 2010

An act to *amend Section 2150 of the Elections Code, to add Section 84311 to the Government Code, and to amend Section 2872 of the Public Utilities Code*, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 19, as amended, Blakeslee. Political Reform Act of 1974: automated campaign telephone calls.

Under existing law, a person may not make automated telephone calls without satisfying the requirements of state law and the federal Telephone Consumer Protection Act of 1991, which require, among other things, that the automated caller obtain the prior consent of the persons to whom the calls are directed *or that the call be operated after an unrecorded, natural voice announcement has been made to the person called by the person calling, as specified.*

Existing provisions of the Political Reform Act of 1974 prohibit a candidate, committee, or slate mailer organization from expending campaign funds, directly or indirectly, to pay for telephone calls that are similar in nature and aggregate 500 or more in number, made by an individual, or individuals, or by electronic means and that advocate support of, or opposition to, a candidate, ballot measure, or both, unless during the course of each call the name of the organization that authorized or paid for the call is disclosed to the recipient of the call, except as specified.

This bill would make it unlawful for any person to make an automated campaign telephone call, as defined, to any person who has elected to have his or her name and ~~phone~~ *telephone* number placed on the California Political Robocall Do Not Call List, which the bill would require the Secretary of State to establish, manage, and maintain. *This bill would prohibit these calls even if the caller obtains the prior consent of the persons to whom the calls are directed or the call is operated after an unrecorded, natural voice announcement has been made to the person called by the person calling.* The bill would provide that the list shall contain the names and ~~phone~~ *telephone* numbers of registered voters who have elected to be on the list. The bill would require the Secretary of State to place on voter registration cards and online voter registration *Internet* Web sites a space providing an option for a registered voter to elect to place ~~their~~ *his or her* name and ~~phone~~ *telephone* number on the list.

This bill would require the Secretary of State to make a copy of the list, and any parts thereof, available to certain persons who are seeking to make automated campaign telephone calls upon payment of a fee by those persons. The bill would require the Secretary of State to determine the amount of the fee to be charged. The bill would prohibit the fee from exceeding the Secretary of State's cost of managing and maintaining the list.

This bill would require county elections officials, in the implementation of this bill, to cooperate with the Secretary of State, vendors, and any voter registration agency.

By changing the duties of county elections officials, this bill would impose a state-mandated local program.

Existing provisions of the Political Reform Act of 1974 make a violation of the act subject to administrative, civil, and criminal penalties.

This bill would provide that a violation of the above provisions pertaining to automated campaign telephone calls shall not subject a person to criminal liability.

This bill would provide that the above-described provisions shall not become operative until 90 days after the date the Secretary of State certifies that the state has a statewide voter registration database that complies with certain requirements of federal law.

This bill would provide that its provision are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2150 of the Elections Code, as amended
- 2 by Section 8 of Chapter 1 of the Statutes of 2009, is amended to
- 3 read:
- 4 2150. (a) The affidavit of registration shall show:
- 5 (1) The facts necessary to establish the affiant as an elector.
- 6 (2) The affiant's name at length, including his or her given
- 7 name, and a middle name or initial, or if the initial of the given
- 8 name is customarily used, then the initial and middle name. The
- 9 affiant's given name may be preceded, at affiant's option, by the
- 10 designation of Miss, Ms., Mrs., or Mr. A person shall not be denied
- 11 the right to register because of his or her failure to mark a prefix
- 12 to the given name and shall be so advised on the voter registration
- 13 card. This subdivision shall not be construed as requiring the
- 14 printing of prefixes on an affidavit of registration.
- 15 (3) The affiant's place of residence, residence telephone number,
- 16 if furnished, and e-mail address, if furnished. No person shall be
- 17 denied the right to register because of his or her failure to furnish
- 18 a telephone number or e-mail address, and shall be so advised on
- 19 the voter registration card.
- 20 (4) The affiant's mailing address, if different from the place of
- 21 residence.
- 22 (5) The affiant's date of birth to establish that he or she will be
- 23 at least 18 years of age on or before the date of the next election.

1 (6) The state or country of the affiant's birth.

2 (7) (A) In the case of an applicant who has been issued a current
3 and valid driver's license, the applicant's driver's license number.

4 (B) In the case of any other applicant, other than an applicant
5 to whom subparagraph (C) applies, the last four digits of the
6 applicant's social security number.

7 (C) If an applicant for voter registration has not been issued a
8 current and valid driver's license or a social security number, the
9 state shall assign the applicant a number that will serve to identify
10 the applicant for voter registration purposes. To the extent that the
11 state has a computerized list in effect under this subdivision and
12 the list assigns unique identifying numbers to registrants, the
13 number assigned under this subparagraph shall be the unique
14 identifying number assigned under the list.

15 (8) The affiant's political party preference.

16 (9) That the affiant is currently not imprisoned or on parole for
17 the conviction of a felony.

18 (10) A prior registration portion indicating whether the affiant
19 has been registered at another address, under another name, or as
20 preferring another party. If the affiant has been so registered, he
21 or she shall give an additional statement giving that address, name,
22 or party.

23 (b) The affiant shall certify the content of the affidavit as to its
24 truth and correctness, under penalty of perjury, with the signature
25 of his or her name and the date of signing. If the affiant is unable
26 to write he or she shall sign with a mark or cross.

27 (c) The affidavit of registration shall also contain a space that
28 would enable the affiant to state his or her ethnicity or race, or
29 both. An affiant may not be denied the ability to register because
30 he or she declines to state his or her ethnicity or race.

31 (d) If any person, including a deputy registrar, assists the affiant
32 in completing the affidavit, that person shall sign and date the
33 affidavit below the signature of the affiant.

34 (e) The affidavit of registration shall also contain a space to
35 permit the affiant to apply for permanent vote by mail status.

36 (f) *The affidavit of registration shall also contain a space*
37 *providing the option described in subdivision (e) of Section 84311*
38 *of the Government Code.*

39 (f)

1 (g) The Secretary of State may continue to supply existing
2 affidavits of registration to county elections officials prior to
3 printing new or revised forms that reflect the changes made to this
4 section by the act that added this subdivision.

5 *SEC. 2. Section 2150 of the Elections Code, as amended by*
6 *Chapter 364 of the Statutes of 2009, is amended to read:*

7 2150. (a) The affidavit of registration shall show:

8 (1) The facts necessary to establish the affiant as an elector.

9 (2) The affiant's name at length, including his or her given
10 name, and a middle name or initial, or if the initial of the given
11 name is customarily used, then the initial and middle name. The
12 affiant's given name may be preceded, at affiant's option, by the
13 designation of Miss, Ms., Mrs., or Mr. A person shall not be denied
14 the right to register because of his or her failure to mark a prefix
15 to the given name and shall be so advised on the voter registration
16 card. This subdivision shall not be construed as requiring the
17 printing of prefixes on an affidavit of registration.

18 (3) The affiant's place of residence, residence telephone number,
19 if furnished, and e-mail address, if furnished. No person shall be
20 denied the right to register because of his or her failure to furnish
21 a telephone number or e-mail address, and shall be so advised on
22 the voter registration card.

23 (4) The affiant's mailing address, if different from the place of
24 residence.

25 (5) The affiant's date of birth to establish that he or she will be
26 at least 18 years of age on or before the date of the next election.
27 In the case of an affidavit of registration submitted pursuant to
28 subdivision (d) of Section 2102, the affiant's date of birth to
29 establish that he or she is at least 17 years of age.

30 (6) The state or country of the affiant's birth.

31 (7) (A) In the case of an applicant who has been issued a current
32 and valid driver's license, the applicant's driver's license number.

33 (B) In the case of any other applicant, other than an applicant
34 to whom subparagraph (C) applies, the last four digits of the
35 applicant's social security number.

36 (C) If an applicant for voter registration has not been issued a
37 current and valid driver's license or a social security number, the
38 state shall assign the applicant a number that will serve to identify
39 the applicant for voter registration purposes. To the extent that the
40 state has a computerized list in effect under this subdivision and

1 the list assigns unique identifying numbers to registrants, the
2 number assigned under this subparagraph shall be the unique
3 identifying number assigned under the list.

4 (8) The affiant's political party preference.

5 (9) That the affiant is currently not imprisoned or on parole for
6 the conviction of a felony.

7 (10) A prior registration portion indicating whether the affiant
8 has been registered at another address, under another name, or as
9 preferring another party. If the affiant has been so registered, he
10 or she shall give an additional statement giving that address, name,
11 or party.

12 (b) The affiant shall certify the content of the affidavit as to its
13 truth and correctness, under penalty of perjury, with the signature
14 of his or her name and the date of signing. If the affiant is unable
15 to write he or she shall sign with a mark or cross.

16 (c) The affidavit of registration shall also contain a space that
17 would enable the affiant to state his or her ethnicity or race, or
18 both. An affiant may not be denied the ability to register because
19 he or she declines to state his or her ethnicity or race.

20 (d) If a person, including a deputy registrar, assists the affiant
21 in completing the affidavit, that person shall sign and date the
22 affidavit below the signature of the affiant.

23 (e) The affidavit of registration shall also contain a space to
24 permit the affiant to apply for permanent vote by mail status.

25 (f) *The affidavit of registration shall also contain a space*
26 *providing the option described in subdivision (e) of Section 84311*
27 *of the Government Code.*

28 (f)

29 (g) The Secretary of State may continue to supply existing
30 affidavits of registration to county elections officials prior to
31 printing new or revised forms that reflect the changes made to this
32 section by the act that added this subdivision.

33 **SECTION 4.**

34 *SEC. 3.* Section 84311 is added to the Government Code, to
35 read:

36 84311. (a) This section shall be known and may be cited as
37 the "California Political Robocall Do-~~No~~ *Not* Call List Act."

38 (b) (1) For purposes of this section, "automated campaign
39 telephone call" means an automated telephone call made to a live
40 person or voicemail or other answering machine device using an

1 automatic dialing-announcing device, as defined in Section 2871
2 of the Public Utilities Code, ~~or a text message sent to a cellular~~
3 ~~telephone subscriber using any type of automatic equipment that~~
4 advocates support of, or opposition to, a candidate, ~~ballot measure,~~
5 ~~or both.~~

6 (2) For purposes of this section, “list” means the California
7 Political Robocall Do Not Call List.

8 (c) (1) ~~It shall be unlawful for any person to~~ *A person shall not*
9 *make an automated campaign telephone call, including an*
10 *automated campaign telephone call made under the conditions*
11 *described in Sections 2873 and 2874 of the Public Utilities Code,*
12 *to any person who has elected to have his or her name and* ~~phone~~
13 *telephone number placed on the California Political Robocall Do*
14 *Not Call List described in subdivision (d).*

15 (2) This section applies to all automated campaign telephone
16 calls made to California residents, regardless of whether the source
17 of the telephone call is in state or out of state.

18 (3) This section does not prohibit telephone calls made, ~~or text~~
19 ~~messages sent,~~ directly by a live person, including a candidate,
20 campaign volunteer, or campaign employee.

21 (4) A person who receives an automated campaign telephone
22 call in violation of this section may notify the commission of the
23 violation.

24 (5) *Nothing in this section shall be construed to permit an*
25 *automated campaign telephone call that is otherwise prohibited*
26 *by law.*

27 (d) (1) The Secretary of State shall establish, manage, and
28 maintain the California Political Robocall Do Not Call List, which
29 shall contain the names and ~~phone~~ *telephone* numbers of registered
30 voters who have elected to be on the list.

31 (2) If a registered voter who has elected to be on the list would
32 like his or her name and ~~phone~~ *telephone* number removed from
33 the list, he or she must submit a letter in writing or through the
34 Secretary of State’s Internet Web site indicating his or her desire
35 to be removed from the list. The Secretary of State shall remove
36 the individual’s name from the list within a reasonable time from
37 when he or she receives the request.

38 (3) If an individual reregisters to vote for any reason, including
39 changing party affiliation or residence, he or she ~~must~~ *may* indicate
40 on the voter registration card his or her desire to maintain his or

1 her name and ~~phone~~ *telephone* number on the list. *If the individual*
2 *reregisters to vote and does not indicate on the voter registration*
3 *card his or her desire to maintain his or her name and telephone*
4 *number on the list, the Secretary of State shall remove that*
5 *individual's name from the list.*

6 (4) An individual electing to have his or her name and ~~phone~~
7 *telephone* number placed on the list or removed from the ~~last~~ list
8 shall not be charged a fee.

9 (e) (1) The Secretary of State shall place in the following
10 locations a space providing an option for a registered voter to elect
11 to place ~~their~~ *his or her* name and ~~phone~~ *telephone* number on the
12 list:

13 (A) Voter registration cards.

14 (B) Online voter registration *Internet* Web sites.

15 (2) (A) The Secretary of State shall have available, on the date
16 this section becomes operative, voter registration cards that include
17 the option described in paragraph (1).

18 (B) The Secretary of State may continue to distribute any voter
19 registration cards printed before this section became operative that
20 do not contain the option described in paragraph (1) until those
21 voter registration cards have all been distributed.

22 (f) (1) The Secretary of State shall, upon payment of a fee,
23 make a copy of the list, and any parts thereof, available to any
24 persons listed in paragraph (3) of subdivision (a) of Section 2194
25 of the Elections Code who are seeking to make automated
26 campaign telephone calls.

27 (2) The Secretary of State shall determine the amount of the fee
28 to be charged. The fee shall not exceed the Secretary of State's
29 cost of managing and maintaining the list. If the aggregate amount
30 of fees collected in a fiscal year exceeds the Secretary of State's
31 cost of maintaining and managing the list, the amount of the fee
32 shall be adjusted by the Secretary of State for the next fiscal year.

33 (g) Notwithstanding subdivision (f), a person listed in paragraph
34 (3) of subdivision (a) of Section 2194 shall be entitled, once per
35 year, to receive a copy of names and ~~phone~~ *telephone* numbers
36 from the list from up to five ~~areas~~ *area* codes without paying a fee
37 to the Secretary of State.

38 (h) In implementing this section, county elections officials shall
39 cooperate with the Secretary of State, vendors, and any voter
40 registration agency designated as such pursuant to the National

1 Voter Registration Act of ~~1973~~ 1993 (42 U.S.C. Sec. 1973gg et
2 seq.).

3 (i) The Secretary of State may contract with an outside source
4 to implement this section.

5 (j) Notwithstanding Section 91000, a violation of this section
6 shall not subject a person to criminal liability.

7 (k) This section shall not become operative until 90 days after
8 the date the Secretary of State certifies that the state has a statewide
9 voter registration database that complies with the requirements of
10 the federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301
11 et seq.).

12 *SEC. 4. Section 2872 of the Public Utilities Code is amended*
13 *to read:*

14 2872. (a) The connection of automatic dialing-announcing
15 devices to a telephone line is subject to this article and to the
16 jurisdiction, control, and regulation of the commission.

17 (b) No person shall operate an automatic dialing-announcing
18 device except in accordance with this article. The use of such a
19 device by any person, either individually or acting as an officer,
20 agent, or employee of a person or corporation operating automatic
21 dialing-announcing devices, is subject to this article.

22 (c) No person shall operate an automatic dialing-announcing
23 device in this state to place a call that is received by a telephone
24 in this state during the hours between 9 p.m. and 9 a.m. California
25 time.

26 (d) This article does not prohibit the use of an automatic
27 dialing-announcing device by any person exclusively on behalf of
28 any of the following:

29 (1) A school for purposes of contacting parents or guardians of
30 pupils regarding attendance.

31 (2) An exempt organization under the Bank and Corporation
32 Tax Law (Part 11 (commencing with Section 23001) of Division
33 2 of the Revenue and Taxation Code) for purposes of contacting
34 its members.

35 (3) A privately owned or publicly owned cable television system
36 for purposes of contacting customers or subscribers regarding the
37 previously arranged installation of facilities on the premises of the
38 customer or subscriber.

39 (4) A privately owned or publicly owned public utility for
40 purposes of contacting customers or subscribers regarding the

1 previously arranged installation of facilities on the premises of the
2 customer or subscriber or for purposes of contacting employees
3 for emergency actions or repairs required for public safety or to
4 restore services.

5 (5) A petroleum refinery, chemical processing plant, or nuclear
6 powerplant for purposes of advising residents, public service
7 agencies, and the news media in its vicinity of an actual or potential
8 life-threatening emergency.

9 (e) This article does not prohibit law enforcement agencies, fire
10 protection agencies, public health agencies, public environmental
11 health agencies, city or county emergency services planning
12 agencies, or any private for-profit agency operating under contract
13 with, and at the direction of, one or more of these agencies, from
14 placing calls through automatic dialing-announcing devices, if
15 those devices are used for any of the following purposes:

16 (1) Providing public service information relating to public safety.

17 (2) Providing information concerning police or fire emergencies.

18 (3) Providing warnings of impending or threatened emergencies.

19 These calls shall not be subject to Section 2874.

20 (f) This article does not apply to any automatic
21 dialing-announcing device that is not used to randomly or
22 sequentially dial telephone numbers but that is used solely to
23 transmit a message to an established business associate, customer,
24 or other person having an established relationship with the person
25 using the automatic dialing-announcing device to transmit the
26 message, or to any call generated at the request of the recipient.

27 (g) The commission may determine any question of fact arising
28 under this section.

29 (h) *Nothing in this section shall be construed to permit an*
30 *automated campaign telephone call, as defined in Section 84311*
31 *of the Government Code, to a person who has elected to have his*
32 *or name and telephone number placed on the California Political*
33 *Robocall Do Not Call List.*

34 *SEC. 5. The provisions of this act are severable. If any*
35 *provision of this act or its application is held invalid, that invalidity*
36 *shall not affect other provisions or applications that can be given*
37 *effect without the invalid provision or application.*

38 ~~SEC. 2.~~

39 *SEC. 6. If the Commission on State Mandates determines that*
40 *this act contains costs mandated by the state, reimbursement to*

1 local agencies and school districts for those costs shall be made
2 pursuant to Part 7 (commencing with Section 17500) of Division
3 4 of Title 2 of the Government Code.

4 ~~SEC. 3.~~

5 *SEC. 7.* The Legislature finds and declares that this bill furthers
6 the purposes of the Political Reform Act of 1974 within the
7 meaning of subdivision (a) of Section 81012 of the Government
8 Code.

O

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 398

Introduced by Senator Hernandez

February 16, 2011

An act to amend Sections ~~7513.8 and 82025.3~~ 7513.8, 7513.87, 82025.3, and 82047.3 of the Government Code, relating to retirement, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 398, as amended, Hernandez. Retirement: ~~external managers~~ *placement agents*.

Existing law regulates investments made by public pension and retirement systems and defines the term "external manager" to mean a person who is seeking to be, or is, retained by *the retirement board of a public pension or retirement system* to manage a portfolio of securities or other assets for compensation, or a person who is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets and who offers or sells, or has offered or sold, securities to a board. *Existing law also defines the term "placement agent" to mean a person hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, or on behalf of another placement agent, who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a board or an investment vehicle, as defined. The Political Reform Act of 1974 defines those terms in a similar way for purposes of an individual acting as a placement agent in connection with a state public retirement system.*

~~This bill would make technical, nonsubstantive changes to those provisions~~ instead define an external manager to mean a person who is seeking to be, or is, retained by a board or an investment vehicle to manage a portfolio of securities or other assets for compensation, or a person who manages an investment fund, as defined, and who offers or sells, or has offered or sold, an ownership interest in the investment fund to a board or an investment vehicle. In addition, the bill would define a placement agent to mean a person directly or indirectly hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager or an investment fund managed by an external manager and who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale to a board or investment vehicle either the investment management services of the external manager or an ownership interest in an investment fund managed by the external manager. The bill would make conforming changes in the definitions of external manager and placement agent for purposes of the Political Reform Act of 1974.

Existing law requires a person acting as a placement agent in connection with any potential system investment made by a local public retirement system to file any applicable reports with a local government agency that requires lobbyists to register and file reports and to comply with any other applicable requirements imposed by a local government agency, unless the person is an employee, officer, director, equityholder, partner, member, or trustee of an external manager who spends $\frac{1}{3}$ or more of his or her time during a calendar year managing the securities or assets owned, controlled, invested, or held by the external manager.

This bill would also exempt a placement agent from any requirements imposed by a local government agency if the placement agent is an employee, officer, or director of an external manager, or of an affiliate of an external manager, and the external manager is registered as an investment adviser or a broker-dealer with the Securities and Exchange Commission or any appropriate state securities regulator; the external manager is participating in a competitive bidding process, such as a request for proposals, or has been selected through that process and is providing services pursuant to a contract executed as a result of that competitive bidding process; and the external manager, if selected through a competitive bidding process, has agreed to a fiduciary standard of care, as defined by the standards of conduct applicable to the retirement board of a public pension or retirement system and set

forth in the California Constitution, when managing a portfolio of assets of a public retirement system.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7513.8 of the Government Code is
2 amended to read:

3 7513.8. As used in *this section* and Sections 7513.85, 7513.86,
4 7513.87, 7513.9, and 7513.95:

5 (a) "Board" means the retirement board of a public pension or
6 retirement system, as defined in subdivision (h) of Section 17 of
7 Article XVI of the California Constitution.

8 (b) "External manager" means either of the following:

9 (1) A person who is seeking to be, or is, retained by a board *or*
10 *an investment vehicle* to manage a portfolio of securities or other
11 assets for compensation.

12 (2) A person who ~~is engaged, or proposes to be engaged, in the~~
13 ~~business of investing, reinvesting, owning, holding, or trading~~
14 ~~securities or other assets~~ *manages an investment fund* and who

1 offers or sells, or has offered or sold, ~~securities~~ an ownership
2 interest in the investment fund to a board or an investment vehicle.

3 (c) (1) “Investment fund” means a private equity fund, public
4 equity fund, venture capital fund, hedge fund, fixed income fund,
5 real estate fund, infrastructure fund, or similar pooled investment
6 entity that is, or holds itself out as being, engaged primarily, or
7 proposes to engage primarily, in the business of investing,
8 reinvesting, owning, holding, or trading securities or other assets.

9 (2) Notwithstanding paragraph (1), an investment company that
10 is registered with the Securities and Exchange Commission
11 pursuant to the Investment Company Act of 1940 (15 U.S.C. Sec.
12 80a-1 et seq.) and that makes a public offering of its securities is
13 not an investment fund.

14 (d) “Investment vehicle” means a corporation, partnership,
15 limited partnership, limited liability company, association, or other
16 entity, either domestic or foreign, managed by an external manager
17 in which a board is the majority investor and that is organized in
18 order to invest with, or retain the investment management services
19 of, other external managers.

20 ~~(e)~~

21 (e) “Person” means an individual, corporation, partnership,
22 limited partnership, limited liability company, or association, either
23 domestic or foreign.

24 ~~(f)~~

25 (f) (1) “Placement agent” means any person directly or
26 indirectly hired, engaged, or retained by, or serving for the benefit
27 of or on behalf of, an external manager, ~~or on behalf of another~~
28 ~~placement agent, or an investment fund managed by an external~~
29 ~~manager, and who acts or has acted for compensation as a finder,~~
30 ~~solicitor, marketer, consultant, broker, or other intermediary in~~
31 ~~connection with the offer or sale of the securities, assets, or services~~
32 ~~of an external manager to a board or an investment vehicle, either~~
33 ~~directly or indirectly. either of the following:~~

34 (A) In the case of an external manager within the meaning of
35 paragraph (1) of subdivision (b), the investment management
36 services of the external manager.

37 (B) In the case of an external manager within the meaning of
38 paragraph (2) of subdivision (b), an ownership interest in an
39 investment fund managed by the external manager.

(2) Notwithstanding paragraph (1), an individual who is an employee, officer, director, equityholder, partner, member, or trustee of an external manager and who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager is not a placement agent.

~~(3) For purposes of this subdivision, “investment vehicle” means a corporation, partnership, limited partnership, limited liability company, association, or other entity, either domestic or foreign, constituting or managed by an external manager in which a board is the majority investor and that is organized in order to invest with, or retain the investment management services of, other external managers.~~

SEC. 2. Section 7513.87 of the Government Code is amended to read:

7513.87. (a) A person acting as a placement agent in connection with any potential system investment made by a local public retirement system shall file any applicable reports with a local government agency that requires lobbyists to register and file reports and shall comply with any applicable requirements imposed by a local government agency pursuant to Section 81013.

(b) This section does not apply to ~~an~~ *either of the following:*

(1) An individual who is an employee, officer, director, equityholder, partner, member, or trustee of an external manager who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager.

(2) An employee, officer, or director of an external manager, or of an affiliate of an external manager, if all of the following apply:

(A) The external manager is registered as an investment adviser or a broker-dealer with the Securities and Exchange Commission or, if exempt from or not subject to registration with the Securities and Exchange Commission, any appropriate state securities regulator.

(B) The external manager is participating in a competitive bidding process, such as a request for proposals, or has been selected through that process and is providing services pursuant to a contract executed as a result of that competitive bidding process.

1 (C) *The external manager, if selected through a competitive*
2 *bidding process described in subparagraph (B), has agreed to a*
3 *fiduciary standard of care, as defined by the standards of conduct*
4 *applicable to the retirement board of a public pension or retirement*
5 *system and set forth in Section 17 of Article XVI of the California*
6 *Constitution, when managing a portfolio of assets of a public*
7 *retirement system in California.*

8 SEC. 3. *Section 82025.3 of the Government Code is amended*
9 *to read:*

10 82025.3. (a) “External manager” means either of the following:

11 (1) A person who is seeking to be, or is, retained by a state
12 public retirement system in California *or an investment vehicle to*
13 *manage a portfolio of securities or other assets for compensation.*

14 (2) A person who ~~is engaged, or proposes to be engaged, in the~~
15 ~~business of investing, reinvesting, owning, holding, or trading~~
16 ~~securities or other assets~~ *manages an investment fund* and who
17 offers or sells, or has offered or sold, ~~securities an ownership~~
18 *interest in the investment fund* to a state public retirement system
19 *in California or an investment vehicle.*

20 (b) *For purposes of this section, “investment fund” has the same*
21 *meaning as set forth in Section 7513.8.*

22 (c) *For purposes of this section, “investment vehicle” has the*
23 *same meaning as set forth in Section 82047.3.*

24 SEC. 4. *Section 82047.3 of the Government Code is amended*
25 *to read:*

26 82047.3. (a) “Placement agent” means an individual *directly*
27 *or indirectly* hired, engaged, or retained by, or serving for the
28 benefit of or on behalf of, an external manager, ~~or on behalf of~~
29 ~~another placement agent, or an investment fund managed by an~~
30 *external manager, and* who acts or has acted for compensation as
31 a finder, solicitor, marketer, consultant, broker, or other
32 intermediary in connection with the offer or sale ~~of the securities,~~
33 ~~assets, or services of an external manager~~ to a state public
34 retirement system in California or an investment vehicle, ~~either~~
35 ~~directly or indirectly.~~ *either of the following:*

36 (1) *In the case of an external manager within the meaning of*
37 *paragraph (1) of subdivision (a) of Section 82025.3, the investment*
38 *management services of the external manager.*

1 (2) *In the case of an external manager within the meaning of*
2 *paragraph (2) of subdivision (a) of Section 82025.3, an ownership*
3 *interest in an investment fund managed by the external manager.*

4 (b) Notwithstanding subdivision (a), an individual who is an
5 employee, officer, director, equityholder, partner, member, or
6 trustee of an external manager and who spends one-third or more
7 of his or her time, during a calendar year, managing the securities
8 or assets owned, controlled, invested, or held by the external
9 manager is not a placement agent.

10 (c) Notwithstanding subdivision (a), an employee, officer, or
11 director of an external manager, or of an affiliate of an external
12 manager, is not a placement agent *with respect to an offer or sale*
13 *of investment management services described in subdivision (a)*
14 *if all of the following apply:*

15 (1) The external manager is registered as an investment adviser
16 or a broker-dealer with the Securities and Exchange Commission
17 or, if exempt from or not subject to registration with the Securities
18 and Exchange Commission, any appropriate state securities
19 regulator.

20 (2) The external manager ~~has been selected through~~ *is*
21 *participating in a competitive bidding process, such as a request*
22 *for proposals*, subject to subdivision (a) of Section 22364 of the
23 Education Code or subdivision (a) of Section 20153 of this code,
24 as applicable, *or has been selected through that process*, and is
25 providing services pursuant to a contract executed as a result of
26 that competitive bidding process.

27 (3) The external manager, *if selected through a competitive*
28 *bidding process described in paragraph (2)*, has agreed to a
29 fiduciary standard of care, as defined by the standards of conduct
30 applicable to the retirement board of a public pension or retirement
31 system and set forth in Section 17 of Article XVI of the California
32 Constitution, when managing a portfolio of assets of a state public
33 retirement system in California.

34 (d) *For purposes of this section, “investment fund” has the same*
35 *meaning as set forth in Section 7513.8.*

36 ~~(d)~~

37 (e) For purposes of this section, “investment vehicle” means a
38 corporation, partnership, limited partnership, limited liability
39 company, association, or other entity, either domestic or foreign,
40 ~~constituting or~~ managed by an external manager in which a state

1 public retirement system in California is the majority investor and
2 that is organized in order to invest with, or retain the investment
3 management services of, other external managers.

4 *SEC. 5. No reimbursement is required by this act pursuant to*
5 *Section 6 of Article XIII B of the California Constitution because*
6 *the only costs that may be incurred by a local agency or school*
7 *district will be incurred because this act creates a new crime or*
8 *infraction, eliminates a crime or infraction, or changes the penalty*
9 *for a crime or infraction, within the meaning of Section 17556 of*
10 *the Government Code, or changes the definition of a crime within*
11 *the meaning of Section 6 of Article XIII B of the California*
12 *Constitution.*

13 *SEC. 6. The Legislature finds and declares that this bill furthers*
14 *the purposes of the Political Reform Act of 1974 within the meaning*
15 *of subdivision (a) of Section 81012 of the Government Code.*

16 *SEC. 7. This act is an urgency statute necessary for the*
17 *immediate preservation of the public peace, health, or safety within*
18 *the meaning of Article IV of the Constitution and shall go into*
19 *immediate effect. The facts constituting the necessity are:*

20 *In order to ensure that public pension and retirement systems*
21 *do not suffer disruptions in their investment transactions that would*
22 *result in immediate and significant economic losses to the state*
23 *and local government agencies, it is necessary that this act take*
24 *effect immediately.*

25 ~~SECTION 1. Section 7513.8 of the Government Code is~~
26 ~~amended to read:~~

27 ~~7513.8. As used in Sections 7513.85, 7513.86, 7513.87, 7513.9,~~
28 ~~and 7513.95:~~

29 ~~(a) "Board" means the retirement board of a public pension or~~
30 ~~retirement system, as defined in subdivision (h) of Section 17 of~~
31 ~~Article XVI of the California Constitution.~~

32 ~~(b) "External manager" means either of the following:~~

33 ~~(1) A person who is seeking to be, or is, retained by a board to~~
34 ~~manage a portfolio of securities or other assets for compensation.~~

35 ~~(2) A person who is engaged, or proposes to be engaged, in the~~
36 ~~business of investing, reinvesting, owning, holding, or trading~~
37 ~~securities or other assets, and who offers or sells, or has offered~~
38 ~~or sold, securities to a board.~~

1 (e) ~~“Person” means an individual, corporation, partnership,~~
2 ~~limited partnership, limited liability company, or association, either~~
3 ~~domestic or foreign.~~

4 (d) (1) ~~“Placement agent” means any person hired, engaged,~~
5 ~~or retained by, or serving for the benefit of or on behalf of, an~~
6 ~~external manager, or on behalf of another placement agent, who~~
7 ~~acts or has acted for compensation as a finder, solicitor, marketer,~~
8 ~~consultant, broker, or other intermediary in connection with the~~
9 ~~offer or sale of the securities, assets, or services of an external~~
10 ~~manager to a board or an investment vehicle, either directly or~~
11 ~~indirectly.~~

12 (2) ~~Notwithstanding paragraph (1), an individual who is an~~
13 ~~employee, officer, director, equityholder, partner, member, or~~
14 ~~trustee of an external manager and who spends one-third or more~~
15 ~~of his or her time, during a calendar year, managing the securities~~
16 ~~or assets owned, controlled, invested, or held by the external~~
17 ~~manager is not a placement agent.~~

18 (3) ~~For purposes of this subdivision, “investment vehicle” means~~
19 ~~a corporation, partnership, limited partnership, limited liability~~
20 ~~company, association, or other entity, either domestic or foreign,~~
21 ~~constituting or managed by an external manager in which a board~~
22 ~~is the majority investor and that is organized in order to invest~~
23 ~~with, or retain the investment management services of, other~~
24 ~~external managers.~~

25 SEC. 2. ~~Section 82025.3 of the Government Code is amended~~
26 ~~to read:~~

27 82025.3. ~~“External manager” means either of the following:~~

28 (1) ~~A person who is seeking to be, or is, retained by a state~~
29 ~~public retirement system in California to manage a portfolio of~~
30 ~~securities or other assets for compensation.~~

31 (2) ~~A person who is engaged, or proposes to be engaged, in the~~
32 ~~business of investing, reinvesting, owning, holding, or trading~~
33 ~~securities or other assets, and who offers or sells, or has offered~~
34 ~~or sold, securities to a state public retirement system in California.~~

Introduced by Senator Wright

February 16, 2011

An act to amend Section 83115 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 415, as introduced, Wright. Political Reform Act of 1974: investigations.

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing, lobbyists, conflicts of interest of public officials, and related matters, and establishes the Fair Political Practices Commission to enforce the act's provisions. The Commission is charged with the responsibility to investigate, upon the sworn complaint of any person or upon its own initiative, possible violations of the act relating to any agency, official, election, lobbyist, or legislative or administrative action.

This bill would require the Commission to notify any person who is the subject of an investigation by the Commission of the investigation at least 24 hours before the Commission makes any information regarding the investigation available to the public.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 83115 of the Government Code is amended to read:

83115. (a) Upon the sworn complaint of any person or on its own initiative, ~~the commission~~ *Commission* shall investigate possible violations of this title relating to any agency, official, election, lobbyist, or legislative or administrative action. ~~Within~~

(b) *A person who is the subject of an investigation by the Commission shall be notified of the investigation at least 24 hours before the Commission makes any information regarding the investigation available to the public.*

(c) *Within 14 days after receipt of a complaint under this section, the commission* *Commission* shall notify in writing the person who made the complaint of the action, if any, ~~the commission~~ *Commission* has taken or plans to take on the complaint, together with the reasons for such action or nonaction. If no decision has been made within 14 days, the person who made the complaint shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

SEC. 2. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL

No. 439

Introduced by Senator Negrete McLeod

February 16, 2011

An act to add Section 22365 to the Education Code, and to amend Section 89503 of, and to add Section 20154 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 439, as amended, Negrete McLeod. Political Reform Act of 1974: PERS: STRS: gift limits.

The Political Reform Act of 1974 prohibits a member of a state board or commission, or a designated employee of a state or local government agency, from accepting gifts from any single source in any calendar year with a total value of more than \$250, *as adjusted biennially by the Fair Political Practices Commission*, if the ~~gift receipt of income or gifts from that source~~ is subject to disclosure on a statement of economic interests. ~~Existing law requires the commission to adjust the gift limitation in this section on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the nearest \$10.~~ Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor.

This bill would prohibit any member of the board *of*, and any *designated* employee of, the Public Employees' Retirement System (PERS) or State Teachers' Retirement System (STRS) from accepting gifts ~~from any single source~~ in any calendar year with a total value of more than \$50 *from any single person who has secured a contract with, or submitted a contract proposal to, PERS or STRS within the previous 5 years.* A gift would not be deemed to have been accepted if the gift or

its equivalent dollar value is returned to the donor of the gift within 30 days after receipt of the gift. Because a knowing or willful violation of this provision would be a crime, the bill would impose a state-mandated local program.

This bill would disqualify any vendor or contractor that makes gifts in violation of the above-described gift limit ~~twice~~ *2 separate times, more than 60 days apart*, in a consecutive 5-year period from bidding on, and being awarded, any contract for a period of 2 years from the date of the conviction of the recipient of the 2nd gift.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22365 is added to the Education Code,
- 2 to read:
- 3 22365. (a) Any vendor or contractor that makes gifts in
- 4 violation of the gift limit in paragraph (2) of subdivision (c) of
- 5 Section 89503 of the Government Code *two separate times* in a
- 6 consecutive five-year period shall be disqualified from bidding
- 7 on, and being awarded, any contract for a period of two years from
- 8 the date of the conviction of the recipient of the second gift
- 9 pursuant to Section 91000 of the Government Code.
- 10 (b) *For purposes of subdivision (a), violations of paragraph (2)*
- 11 *of subdivision (c) of Section 89503 shall be deemed separate if*
- 12 *they occur more than 60 days apart.*
- 13 SEC. 2. Section 20154 is added to the Government Code, to
- 14 read:
- 15 20154. (a) Any vendor or contractor that makes gifts in
- 16 violation of the gift limit in paragraph (2) of subdivision (c) of

1 Section 89503 two *separate* times in a consecutive five-year period
2 shall be disqualified from bidding on, and being awarded, any
3 contract for a period of two years from the date of the conviction
4 of the recipient of the second gift pursuant to Section 91000.

5 (b) *For purposes of subdivision (a), violations of paragraph (2)*
6 *of subdivision (c) of Section 89503 shall be deemed separate if*
7 *they occur more than 60 days apart.*

8 SEC. 3. Section 89503 of the Government Code is amended
9 to read:

10 89503. (a) No elected state officer, elected officer of a local
11 government agency, or other individual specified in Section 87200
12 shall accept gifts from any single source in any calendar year with
13 a total value of more than two hundred fifty dollars (\$250).

14 (b) (1) No candidate for elective state office, for judicial office,
15 or for elective office in a local government agency shall accept
16 gifts from any single source in any calendar year with a total value
17 of more than two hundred fifty dollars (\$250). A person shall be
18 deemed a candidate for purposes of this subdivision when the
19 person has filed a statement of organization as a committee for
20 election to a state or local office, a declaration of intent, or a
21 declaration of candidacy, whichever occurs first. A person shall
22 not be deemed a candidate for purposes of this subdivision after
23 he or she is sworn into the elective office, or, if the person lost the
24 election, after the person has terminated his or her campaign
25 statement filing obligations for that office pursuant to Section
26 84214 or after certification of the election results, whichever is
27 earlier.

28 (2) Paragraph (1) shall not apply to any person who is a
29 candidate as described in paragraph (1) for judicial office on or
30 before December 31, 1996.

31 (c) (1) No member of a state board or commission or designated
32 employee of a state or local government agency shall accept gifts
33 from any single source in any calendar year with a total value of
34 more than two hundred fifty dollars (\$250) if the member or
35 employee would be required to report the receipt of income or
36 gifts from that source on his or her statement of economic interests.

37 (2) Notwithstanding paragraph (1) and subdivision (f), no
38 member of the board *of*, and no *designated* employee of, the Public
39 Employees' Retirement System or State Teachers' Retirement
40 System shall accept gifts ~~from any single source~~ in any calendar

1 year with a total value of more than fifty dollars (\$50) *from any*
2 *single person who has secured a contract with, or submitted a*
3 *contract proposal to, the Public Employees' Retirement System*
4 *or State Teachers' Retirement System within the previous five*
5 *years. A member of the board of, or a designated employee of, the*
6 *Public Employees' Retirement System or State Teachers'*
7 *Retirement System shall not be deemed to have accepted a gift*
8 *within the meaning of this paragraph if the gift, or the equivalent*
9 *dollar value of the gift, is returned to the donor of the gift within*
10 *30 days after its receipt.*

11 (d) This section shall not apply to a person in his or her capacity
12 as judge. This section shall not apply to a person in his or her
13 capacity as a part-time member of the governing board of any
14 public institution of higher education unless that position is an
15 elective office.

16 (e) This section shall not prohibit or limit the following:

17 (1) Payments, advances, or reimbursements for travel and related
18 lodging and subsistence permitted by Section 89506.

19 (2) Wedding gifts and gifts exchanged between individuals on
20 birthdays, holidays, and other similar occasions, provided that the
21 gifts exchanged are not substantially disproportionate in value.

22 (f) Beginning on January 1, 1993, the commission shall adjust
23 the gift limitation in this section on January 1 of each
24 odd-numbered year to reflect changes in the Consumer Price Index,
25 rounded to the nearest ten dollars (\$10).

26 (g) The limitations in this section are in addition to the
27 limitations on gifts in Section 86203.

28 SEC. 4. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

37 SEC. 5. The Legislature finds and declares that this bill furthers
38 the purposes of the Political Reform Act of 1974 within the

1 meaning of subdivision (a) of Section 81012 of the Government
2 Code.

O

AMENDED IN SENATE APRIL 6, 2011

AMENDED IN SENATE MARCH 7, 2011

SENATE BILL

No. 46

Introduced by Senator Correa
(Coauthor: Assembly Member Smyth)

December 9, 2010

~~An act to add and repeal Article 2.5 (commencing with Section 1050) of Chapter 1 of Division 4 of Title 1 of the Government Code, relating to local government, and declaring the urgency thereof, to take effect immediately. An act to add and repeal Sections 87202.5 and 87302.2 of the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 46, as amended, Correa. ~~Local government:~~ *Public officials:* compensation disclosure.

~~Existing law provides for the compensation of local government officers and employees, as specified.~~

Existing provisions of the Political Reform Act of 1974 require certain persons employed by agencies to file annually a written statement of the economic interests they possess during specified periods. The act requires that state agencies promulgate a conflict of interest code that must contain, among other topics, provisions that require designated employees to file statements disclosing reportable investments, business positions, interests in real property, and income. The act requires that every report and statement filed pursuant to the act is a public record and is open to public inspection.

This bill would, until January 1, 2019, ~~require each public official every person, defined to mean a public official required to file a~~

~~statement of economic interest pursuant to the Political Reform Act of 1974, to annually file except a candidate for public office, who is required to file a statement of economic interests to include, as a part of that filing, a compensation disclosure form that provides compensation information for the preceding calendar year, as specified. The bill would specify that compensation disclosure forms are open to public inspection, as specified. This bill would, until January 1, 2019, require each designated employee who is required to file statements under a conflict of interest code to include, as a part of that filing, a compensation disclosure form that provides compensation information for the preceding calendar year.~~

The bill would, until January 1, 2019, require each ~~public agency, as defined,~~ to post on that ~~public agency's~~ Internet Web site the information contained on the compensation disclosure form filed by a ~~public official person required to file a statement of economic interest or a designated employee,~~ and the written policy for the reimbursement of actual and necessary expenses.

The bill would require the Controller, on or before October 1, 2011, to adopt *emergency* regulations for the implementation of these requirements, including the format of the compensation disclosure form. The bill would also require the Controller, on or before July 1, 2012, to recommend to the Governor and the Legislature methods for compiling the information contained on ~~public officials' a person's or a designated employee's~~ compensation disclosure forms in one or more publicly accessible databases, including specific proposals for establishment, operation, oversight, and funding, as specified.

This bill would authorize the Bureau of State Audits to report to the Governor and the Legislature regarding the implementation and effectiveness of this bill.

The bill would also authorize a district attorney or any interested person to commence an action by mandamus *or injunction* to enforce the ~~provision~~ provisions of the bill, as specified.

~~The duties imposed on local agencies by the bill would create a state-mandated local program.~~

Existing provisions of the act make a violation of the act subject to administrative, civil, and criminal penalties.

This bill would impose a state-mandated local program by imposing those criminal penalties on persons who violate the provisions of the bill.

The bill would express a legislative finding and declaration that it addresses the right of access by the people of the state to information concerning the conduct of the people's business.

The bill would express a legislative finding and declaration that, to ensure the statewide integrity of local government, disclosure of compensation paid ~~filers~~ *to public officials and designated employees* is an issue of statewide concern and not a municipal affair and that, therefore, all cities, including charter cities, would be subject to the provisions of the bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 87202.5 is added to the Government Code,
2 to read:

3 87202.5. (a) (1) Every person, except a candidate for public
4 office, who is required to file a statement of economic interests
5 pursuant to Section 87202, shall, as a part of that filing, include
6 a compensation disclosure form that provides compensation
7 information for the preceding calendar year.

8 (2) Nothing in this section shall be construed to prevent an
9 agency from adopting more extensive procedures and standards

1 *relating to the disclosure of compensation information by persons*
2 *employed by the agency.*

3 *(3) If an agency maintains an Internet Web site, it shall post the*
4 *following information on its Internet Web site:*

5 *(A) The information contained on the compensation disclosure*
6 *form filed by a person pursuant to this section.*

7 *(B) The written policy for the reimbursement of actual and*
8 *necessary expenses adopted pursuant to Section 53232.2, if*
9 *applicable.*

10 *(b) As an alternative to subdivision (a), if an agency maintains*
11 *an Internet Web site, it may compile the information required by*
12 *subdivision (c) for each person employed by the agency who is*
13 *required to file a statement of economic interests pursuant to*
14 *Section 87202 and post that information on its Internet Web site.*
15 *The information for each of those persons shall be available upon*
16 *request pursuant to Section 81008.*

17 *(c) (1) On or before October 1, 2011, the Controller shall adopt*
18 *emergency regulations pursuant to Section 11346.1 for the*
19 *implementation of this section, including the format of the*
20 *compensation disclosure form.*

21 *(2) The compensation disclosure form shall provide for the*
22 *disclosure of each of the following:*

23 *(A) The agency's cost for a person's annual salary or stipend.*

24 *(B) The agency's cost to provide benefits to a person, including,*
25 *but not limited to, deferred compensation or defined benefit plans.*

26 *(C) The agency's reimbursement payments to a person for actual*
27 *and necessary expenses incurred on behalf of the local agency in*
28 *the performance of official duties.*

29 *(D) The agency's cost to provide a person with any other*
30 *monetary or nonmonetary perquisites of office.*

31 *(E) The date on which a person completed the training required*
32 *by Section 8956, Article 12 (commencing with Section 11146) of*
33 *Chapter 1 of Part 1 of Division 3 of Title 2, or Article 2.4*
34 *(commencing with Section 53234) of Chapter 2 of Part 1 of*
35 *Division 2 of Title 5, if applicable.*

36 *(3) The information disclosed pursuant to this subdivision shall*
37 *also include any amounts received by a person as a result of that*
38 *person's membership with, or employment by, any other entity if*
39 *the governing body of that entity and the governing body of the*

1 agency that the person is a member of, or employed by, share
2 membership.

3 (d) (1) The district attorney or any interested person may
4 commence an action by mandamus or injunction to compel a
5 person or agency to comply with the requirements of this section.
6 Nothing in this section shall be construed to prevent a public
7 official or agency from curing or correcting an action challenged
8 pursuant to this section.

9 (2) Prior to any action being commenced pursuant to this
10 section, the district attorney or interested person shall make a
11 demand of the person or agency to cure or correct the action
12 alleged to have been taken in violation of this section. The demand
13 shall be in writing and clearly describe the nature of the alleged
14 violation.

15 (3) Within 30 days of receipt of the demand, the person or
16 agency shall cure or correct the alleged violation and notify the
17 demanding party in writing of the decision to cure or correct the
18 alleged violation or inform the demanding party in writing of its
19 decision not to cure or correct the alleged violation.

20 (4) Within 15 days of receipt of the written notice of the decision
21 to cure or correct an alleged violation, or not to cure or correct,
22 or within 15 days of the expiration of the 30-day period to cure or
23 correct, whichever is earlier, the demanding party shall be required
24 to commence the action pursuant to this section or thereafter be
25 barred from commencing the action.

26 (5) If the person or agency takes no action within the 30-day
27 period, the inaction shall be deemed a decision not to cure or
28 correct the alleged violation, and the 15-day period to commence
29 the action described in paragraph (4) shall commence to run the
30 day after the 30-day period to cure or correct expires.

31 (6) During any action seeking a judicial determination pursuant
32 to this section if the court determines, pursuant to a showing that
33 an alleged violation has been cured or corrected by a subsequent
34 action, the action filed pursuant to this section shall be dismissed
35 with prejudice

36 (e) (1) On or before July 1, 2012, the Controller shall
37 recommend to the Governor and the Legislature methods for
38 compiling the information contained on a person's compensation
39 disclosure forms in one or more publicly accessible databases.

1 *These recommendations shall include specific proposals for*
2 *establishment, operation, oversight, and funding.*

3 *(2) On or before January 1, 2018, to the extent resources are*
4 *available, the Bureau of State Audits may review and report to the*
5 *Governor and the Legislature regarding the implementation and*
6 *effectiveness of this section. The bureau's report shall rely on*
7 *criteria, including, but not limited to, the accuracy, completeness,*
8 *ease of use, and timeliness of the compensation disclosure forms*
9 *filed pursuant to this section. The bureau's report may include*
10 *recommendations for the Legislature's consideration.*

11 *(f) This section shall remain in effect only until January 1, 2019,*
12 *and as of that date is repealed, unless a later enacted statute, that*
13 *is enacted before January 1, 2019, deletes or extends that date.*

14 *SEC. 2. Section 87302.2 is added to the Government Code, to*
15 *read:*

16 *87302.2. (a) (1) In addition to the requirements of subdivision*
17 *(b) of Section 87302, every designated employee shall also include,*
18 *as a part of that filing, a compensation disclosure form as provided*
19 *for in Section 87202.5. The compensation disclosure form shall*
20 *comply with the regulations promulgated by the Controller*
21 *pursuant to subdivision (c) of Section 87202.5.*

22 *(2) Nothing in this section shall be construed to prevent an*
23 *agency from adopting more extensive procedures and standards*
24 *relating to the disclosure of compensation information by its*
25 *designated employees.*

26 *(3) If an agency maintains an Internet Web site, it shall post the*
27 *following information on its Internet Web site:*

28 *(A) The information contained on the compensation disclosure*
29 *form filed by a designated employee pursuant to this section.*

30 *(B) The written policy for the reimbursement of actual and*
31 *necessary expenses adopted pursuant to Section 53232.2, if*
32 *applicable.*

33 *(b) As an alternative to subdivision (a), if an agency maintains*
34 *an Internet Web site, it may compile the information required by*
35 *subdivision (a) for each of its designated employees and post that*
36 *information on its Internet Web site. The information for each of*
37 *those designated employees shall be available upon request*
38 *pursuant to Section 81008.*

39 *(c) The district attorney or any interested person may commence*
40 *an action by mandamus or injunction to compel a designated*

1 *employee or agency to comply with the requirements of this section*
2 *by following the procedure enumerated in subdivision (d) of Section*
3 *87202.5.*

4 *(d) (1) On or before July 1, 2012, the Controller shall*
5 *recommend to the Governor and the Legislature methods for*
6 *compiling the information contained on a designated employee's*
7 *compensation disclosure forms in one or more publicly accessible*
8 *databases. These recommendations shall include specific proposals*
9 *for establishment, operation, oversight, and funding.*

10 *(2) On or before January 1, 2018, to the extent resources are*
11 *available, the Bureau of State Audits may review and report to the*
12 *Governor and the Legislature regarding the implementation and*
13 *effectiveness of this section. The bureau's report shall rely on*
14 *criteria, including, but not limited to, the accuracy, completeness,*
15 *ease of use, and timeliness of the compensation disclosure forms*
16 *filed pursuant to this section. The bureau's report may include*
17 *recommendations for the Legislature's consideration.*

18 *(e) This section shall remain in effect only until January 1, 2019,*
19 *and as of that date is repealed, unless a later enacted statute, that*
20 *is enacted before January 1, 2019, deletes or extends that date.*

21 ~~SECTION 1. Article 2.5 (commencing with Section 1050) is~~
22 ~~added to Chapter 1 of Division 4 of Title 1 of the Government~~
23 ~~Code, to read:~~

24
25 ~~Article 2.5. DISCLOSURE OF PUBLIC OFFICIALS'~~
26 ~~COMPENSATION~~
27

28 ~~1050. As used in this section, the following terms have the~~
29 ~~following meanings:~~

- 30 ~~(a) "City" means a general law city or a charter city.~~
31 ~~(b) "Local agency" means any county, city, special district, or~~
32 ~~school district, or any other local or regional political subdivision,~~
33 ~~including a joint powers agency formed pursuant to the Joint~~
34 ~~Exercise of Powers Act (Chapter 5 (commencing with Section~~
35 ~~6500) of Division 7).~~
36 ~~(c) "Public agency" means any state agency or local agency.~~
37 ~~(d) "Public official" means any person, except a candidate for~~
38 ~~office, who is required to file a statement of economic interests~~
39 ~~pursuant to Section 87200.~~

1 (e) ~~“School district” means a school district, community college~~
2 ~~district, county board of education, or county superintendent of~~
3 ~~schools.~~

4 (f) ~~“Special district” means any agency of the state established~~
5 ~~for the local performance of governmental or proprietary functions~~
6 ~~within limited boundaries.~~

7 (g) ~~“State agency” means every state office, department,~~
8 ~~division, bureau, board, or commission, or the Legislature.~~

9 1051. (a) ~~Each public official shall annually file a~~
10 ~~compensation disclosure form that provides compensation~~
11 ~~information for the preceding calendar year. A public official shall~~
12 ~~file the compensation disclosure form with the same office that~~
13 ~~receives his or her statement of economic interest pursuant to~~
14 ~~Section 87500. The annual deadline for filing a compensation~~
15 ~~disclosure form shall be the same as the deadline for filing annual~~
16 ~~statements of economic interest, pursuant to Sections 87203 and~~
17 ~~87302.~~

18 (b) ~~Nothing in this article shall be construed to prevent a public~~
19 ~~agency from adopting more restrictive procedures and standards~~
20 ~~relating to the disclosure of compensation information.~~

21 (c) ~~If a public agency maintains an Internet Web site, it shall~~
22 ~~post the following information on its Internet Web site:~~

23 (1) ~~The information contained on the compensation disclosure~~
24 ~~form filed by a public official.~~

25 (2) ~~The written policy for the reimbursement of actual and~~
26 ~~necessary expenses adopted pursuant to Section 53232.2, if~~
27 ~~applicable.~~

28 1052. ~~As an alternative to Section 1051, if a public agency~~
29 ~~maintains an Internet Web site, it may compile the information~~
30 ~~required by Section 1053 for each of its public officials and post~~
31 ~~that information on its Internet Web site. The information for each~~
32 ~~of those public officials shall be available upon request pursuant~~
33 ~~to Section 1055.~~

34 1053. (a) ~~On or before October 1, 2011, the Controller shall~~
35 ~~adopt regulations pursuant to Chapter 3.5 (commencing with~~
36 ~~Section 11340) of Part 1 of Division 3 of Title 2 for the~~
37 ~~implementation of this article, including the format of the~~
38 ~~compensation disclosure form.~~

39 (b) ~~The compensation disclosure form shall provide for the~~
40 ~~disclosure of each of the following:~~

1 ~~(1) The public agency's cost for the public official's annual~~
2 ~~salary or stipend.~~

3 ~~(2) The public agency's cost to provide benefits to the public~~
4 ~~official, including but not limited to, deferred compensation or~~
5 ~~defined benefit plans.~~

6 ~~(3) The public agency's reimbursement payments to the public~~
7 ~~official for actual and necessary expenses incurred on behalf of~~
8 ~~the local agency in the performance of official duties.~~

9 ~~(4) The public agency's cost to provide the public official with~~
10 ~~any other monetary or nonmonetary perquisites of office.~~

11 ~~(5) The date on which the public official completed the training~~
12 ~~required by Section 8956, Article 12 (commencing with Section~~
13 ~~11146) of Chapter 1 of Part 1 of Division 3 of Title 2, or Article~~
14 ~~2.4 (commencing with Section 53234) of Chapter 2 of Part 1 of~~
15 ~~Division 2 of Title 5, if applicable.~~

16 ~~1054. The information disclosed pursuant to Section 1053 shall~~
17 ~~also include any amounts received by a public official as a result~~
18 ~~of that person's membership with, or employment by, any other~~
19 ~~public agency if the membership of the other public agency's~~
20 ~~governing body is sufficient in number to constitute a quorum or~~
21 ~~a majority of the governing body membership of the first public~~
22 ~~agency.~~

23 ~~1055. Every compensation disclosure form filed pursuant to~~
24 ~~this article shall be open for public inspection and reproduction~~
25 ~~during regular business hours, commencing as soon as practicable,~~
26 ~~but not later than the second business day following the day on~~
27 ~~which it was received. No conditions shall be imposed upon a~~
28 ~~person desiring to inspect or reproduce a compensation disclosure~~
29 ~~form filed pursuant to this article, nor shall any information or~~
30 ~~identification be required from the person. Copies shall be provided~~
31 ~~at a charge not to exceed ten cents (\$0.10) per page. In addition,~~
32 ~~a retrieval fee not to exceed five dollars (\$5) per request may be~~
33 ~~charged for copies of reports and statements that are more than~~
34 ~~five years old. A request for more than one compensation~~
35 ~~disclosure form at the same time shall be considered a single~~
36 ~~request.~~

37 ~~1056. (a) The district attorney or any interested person may~~
38 ~~commence an action by mandamus or injunction to compel a public~~
39 ~~official or public agency to comply with the requirements of this~~
40 ~~article. Nothing in this article shall be construed to prevent a public~~

~~official or public agency from curing or correcting an action challenged pursuant to this article.~~

~~(b) Prior to any action being commenced pursuant to this article, the district attorney or interested person shall make a demand of the public official or public agency to cure or correct the action alleged to have been taken in violation of this article. The demand shall be in writing and clearly describe the nature of the alleged violation.~~

~~(c) Within 30 days of receipt of the demand, the public official or public agency shall cure or correct the alleged violation and notify the demanding party in writing of the decision to cure or correct the alleged violation or inform the demanding party in writing of its decision not to cure or correct the alleged violation.~~

~~(d) Within 15 days of receipt of the written notice of the decision to cure or correct an alleged violation, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to this article or thereafter be barred from commencing the action.~~

~~(e) If the public official or public agency takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the alleged violation, and the 15-day period to commence the action described in subdivision (d) shall commence to run the day after the 30-day period to cure or correct expires.~~

~~(f) During any action seeking a judicial determination pursuant to this article if the court determines, pursuant to a showing that an alleged violation has been cured or corrected by a subsequent action, the action filed pursuant to this article shall be dismissed with prejudice.~~

~~1057. (a) On or before July 1, 2012, the Controller shall recommend to the Governor and the Legislature methods for compiling the information contained on public officials' compensation disclosure forms in one or more publicly accessible databases. These recommendations shall include specific proposals for establishment, operation, oversight, and funding.~~

~~(b) On or before January 1, 2018, the Bureau of State Audits shall report to the Governor and the Legislature regarding the implementation and effectiveness of this article.~~

1 ~~1058. This article shall remain in effect only until January 1,~~
2 ~~2019, and as of that date is repealed, unless a later enacted statute,~~
3 ~~that is enacted before January 1, 2019, deletes or extends that date.~~

4 ~~SEC. 2.~~

5 ~~SEC. 3.~~ The Legislature finds and declares that the fiscal
6 integrity and stability of local governmental agencies in this state,
7 including charter cities, directly affects the long-term well-being
8 of all the residents of this state. The public perception of efficient,
9 transparent, and accountable governmental structures in public
10 agencies in California affects the likelihood of businesses locating
11 to or remaining in the state. Therefore, the Legislature finds and
12 declares that to ensure the statewide integrity of state agencies and
13 local agencies, the disclosure of compensation paid to public
14 officials *or designated employees* is an issue of statewide concern
15 and not a municipal affair, as that term is used in Section 5 of
16 Article XI of the California Constitution. Therefore, this act shall
17 apply to all cities, including charter cities.

18 ~~SEC. 3. If the Commission on State Mandates determines that~~
19 ~~this act contains costs mandated by the state, reimbursement to~~
20 ~~local agencies and school districts for those costs shall be made~~
21 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
22 ~~4 of Title 2 of the Government Code.~~

23 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
24 ~~Section 6 of Article XIII B of the California Constitution because~~
25 ~~the only costs that may be incurred by a local agency or school~~
26 ~~district will be incurred because this act creates a new crime or~~
27 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
28 ~~for a crime or infraction, within the meaning of Section 17556 of~~
29 ~~the Government Code, or changes the definition of a crime within~~
30 ~~the meaning of Section 6 of Article XIII B of the California~~
31 ~~Constitution.~~

32 ~~SEC. 5. The Legislature finds and declares that this bill furthers~~
33 ~~the purposes of the Political Reform Act of 1974 within the meaning~~
34 ~~of subdivision (a) of Section 81012 of the Government Code.~~

35 ~~SEC. 4.~~

36 ~~SEC. 6.~~ This act is an urgency statute necessary for the
37 immediate preservation of the public peace, health, or safety within
38 the meaning of Article IV of the Constitution and shall go into
39 immediate effect. The facts constituting the necessity are:

1 Maintaining the public's trust in the efficiency, transparency,
2 and accountability of their public agencies is essential to the
3 operation of governments that protect the public peace, health, and
4 safety of all Californians. It is essential that measures which protect
5 the public trust take effect immediately.

O

Introduced by Senator Correa

February 17, 2011

An act to add Section 84305.7 to the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 488, as introduced, Correa. Political Reform Act of 1974: slate mailers.

The Political Reform Act of 1974 regulates mass mailings, known as slate mailers, that support or oppose multiple candidates or ballot measures for an election. The act requires that each slate mailer identify the slate mailer organization that is sending the slate mailer and make other specified disclosures, and further requires the slate mailer organization to file periodic statements reporting payments received and expenditures made to produce slate mailers.

This bill would provide that, if a slate mailer organization sends a slate mailer or other mass mailing that displays a logo, insignia, emblem, or trademark that is identical or substantially similar to the logo, insignia, emblem, or trademark of a governmental agency or a nongovernmental organization that represents law enforcement, firefighting, emergency medical, or other public safety personnel, and that would reasonably be understood to imply the participation or endorsement of that governmental agency or nongovernmental organization, the slate mailer organization would be required to obtain the express written consent of the governmental agency or nongovernmental organization associated with the logo, insignia, emblem, or trademark prior to using the logo, insignia, emblem, or trademark in the slate mailer or other mass mailing.

This bill would also provide that, if a slate mailer organization sends a slate mailer or other mass mailing that identifies itself or its source

material as representing a nongovernmental organization with a name that would reasonably be understood to imply that the organization is composed of, or affiliated with, law enforcement, firefighting, emergency medical, or other public safety personnel, the slate mailer or mass mailing would be required to disclose the total number of members in the organization identified and the number of members working or living within the county in which the slate mailer or mass mailing is being delivered.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The spirit of existing state law governing the unauthorized
- 4 use of specified logos for political purposes has, at times, been
- 5 creatively manipulated by those seeking to influence the voting
- 6 public.
- 7 (b) The unauthorized use of governmental or organizational
- 8 logos, insignias, emblems, trademarks, and other identifiers of
- 9 federal, state, and local governments, and of organizations of
- 10 governmental officials, on political mailers deceives the recipients
- 11 and leads to an erosion of the public's trust. The unauthorized use
- 12 of logos, insignias, emblems, and trademarks used by public safety

1 departments, organizations, and professionals further creates a risk
2 that the public will be misled and confused as it attempts to
3 distinguish between legitimate public safety communications and
4 political propaganda.

5 (c) California's public safety departments and organizations are
6 charged with disseminating and enforcing important emergency
7 warnings to the public, such as reverse 911 calls, Emergency
8 Broadcast System messages, red flag warnings, and other important
9 emergency prevention and evacuation orders that save lives.

10 (d) The very real potential exists for our state's citizens to
11 disregard important public safety information in the event of an
12 emergency because they inaccurately assume that it is associated
13 with a political candidate or campaign.

14 (e) It is therefore the intent of the Legislature to ensure that
15 these logos, insignias, emblems, trademarks, and other identifiers
16 are used only with the approval of the governmental agency,
17 department, group, or organization to which the identifier belongs
18 and, in so doing, to ensure that the integrity of the identifier is
19 upheld and the public's trust in these agencies, departments, groups,
20 and organizations is protected.

21 SEC. 2. Section 84305.7 is added to the Government Code, to
22 read:

23 84305.7. (a) If a slate mailer organization sends a slate mailer
24 or other mass mailing that displays a logo, insignia, emblem, or
25 trademark that is identical or substantially similar to the logo,
26 insignia, emblem, or trademark of a governmental agency, and
27 that would reasonably be understood to imply the participation or
28 endorsement of that governmental agency, the slate mailer
29 organization shall obtain the express written consent of the
30 governmental agency associated with the logo, insignia, emblem,
31 or trademark prior to using the logo, insignia, emblem, or
32 trademark in the slate mailer or other mass mailing.

33 (b) If a slate mailer organization sends a slate mailer or other
34 mass mailing that displays a logo, insignia, emblem, or trademark
35 that is identical or substantially similar to the logo, insignia,
36 emblem, or trademark of a nongovernmental organization that
37 represents law enforcement, firefighting, emergency medical, or
38 other public safety personnel, and that would reasonably be
39 understood to imply the participation or endorsement of that
40 nongovernmental organization, the slate mailer organization shall

1 obtain the express written consent of the nongovernmental
2 organization associated with the logo, insignia, emblem, or
3 trademark prior to using the logo, insignia, emblem, or trademark
4 in the slate mailer or other mass mailing.

5 (c) If a slate mailer organization sends a slate mailer or other
6 mass mailing that identifies itself or its source material as
7 representing a nongovernmental organization with a name that
8 includes the term “officer,” “peace officer,” “reserve officer,”
9 “deputy,” “deputy sheriff,” “police,” “highway patrol,” “California
10 Highway Patrol,” “law enforcement,” “firefighter,” “fire marshal,”
11 “paramedic,” “emergency medical technician,” “public safety,”
12 or any other term that would reasonably be understood to imply
13 that the organization is composed of, or affiliated with, law
14 enforcement, firefighting, emergency medical, or other public
15 safety personnel, the slate mailer or mass mailing shall disclose
16 on the outside of each piece of mail and on at least one of the
17 inserts included with each piece of mail in no less than 12-point
18 roman type, which shall be in a color or print that contrasts with
19 the background so as to be easily legible, the total number of
20 members in the organization identified and the number of members
21 working or living within the county in which the slate mailer or
22 mass mailing is being delivered.

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.

32 SEC. 4. The Legislature finds and declares that this bill furthers
33 the purposes of the Political Reform Act of 1974 within the
34 meaning of subdivision (a) of Section 81012 of the Government
35 Code.

AMENDED IN SENATE APRIL 26, 2011

SENATE BILL

No. 593

Introduced by Senator Gaines

February 17, 2011

An act to add Section ~~87100.5~~ *67051* to the Government Code, relating to the Tahoe Regional Planning Agency.

LEGISLATIVE COUNSEL'S DIGEST

SB 593, as amended, Gaines. Political Reform Act of 1974: Tahoe Regional Planning Agency: members: statement of economic interests.

(1) Existing law creates the Tahoe Regional Planning Agency as a separate legal entity and as a political subdivision of the State of California, and prescribes the membership and functions and duties of the agency, as specified. Existing law requires that any member of the agency that has a direct personal financial interest in a matter officially coming before the agency to disclose the fact of his or her interest and to abstain from participation in any discussion or vote upon the matter. Existing law, the Political Reform Act of 1974, prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which he or she knows, or has reason to know, he or she has a financial interest. A violation of the act is a crime.

This bill would additionally require each California member of the agency, who represents the state in matters officially coming before the agency, to comply with ~~the~~ *certain* requirements of the Political Reform Act of 1974, and to file with the Fair Political Practices Commission a specified form containing a statement of economic interests. Because

the bill would expand the definition of a crime under the act, it would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section—~~87100.5~~ 67051 is added to the
 2 Government Code, to read:
 3 ~~87100.5:~~
 4 67051. (a) Each California member of the Tahoe Regional
 5 Planning Agency who represents the state in matters officially
 6 coming before the agency shall comply with the requirements of
 7 ~~this chapter~~ the Political Reform Act of 1974 (Title 9 (commencing
 8 with Section 81000)) and shall file with the Fair Political Practices
 9 Commission a ~~Form 700~~ statement of economic interests.
 10 (b) A court shall not invalidate, and the commission shall not
 11 seek to invalidate, an action of the Tahoe Regional Planning
 12 Agency as a remedy for a violation of the requirements of this
 13 chapter by a California member of the agency, as specified in
 14 subdivision (a).
 15 SEC. 2. No reimbursement is required by this act pursuant to
 16 Section 6 of Article XIII B of the California Constitution because
 17 the only costs that may be incurred by a local agency or school
 18 district will be incurred because this act creates a new crime or
 19 infraction, eliminates a crime or infraction, or changes the penalty
 20 for a crime or infraction, within the meaning of Section 17556 of
 21 the Government Code, or changes the definition of a crime within
 22 the meaning of Section 6 of Article XIII B of the California
 23 Constitution.

1 SEC. 3. The Legislature finds and declares that this bill furthers
2 the purposes of the Political Reform Act of 1974 within the
3 meaning of subdivision (a) of Section 81012 of the Government
4 Code.

O

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL

No. 801

**Introduced by Senator Kehoe
(Coauthors: Senators Correa and Gaines)**

February 18, 2011

An act to amend Section 87500 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 801, as amended, Kehoe. Political Reform Act of 1974: statement of economic interests.

Existing provisions of the Political Reform Act of 1974 require specified candidates for elective office, elected and appointed state officers, and public officers and employees to file statements of economic interests with specified entities according to the employing agency or office of the officer, employee, or candidate.

This bill would direct persons appointed to ~~a specific term on~~ a state board, commission, or similar multimember body of the state to file ~~one original copy~~ of their statements of economic interests with the respective board, commission, or body, which would be required to ~~make and retain a copy and forward~~ the original *and forward a copy* to the Fair Political Practices Commission (FPPC). ~~The bill would designate the FPPC as the filing officer for purposes of those statements.~~

Because a violation of the act is a misdemeanor, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 87500 of the Government Code is
2 amended to read:

3 87500. Statements of economic interests required by this
4 chapter shall be filed as follows:

5 (a) Statewide elected officer—one original with the agency,
6 which shall make and retain a copy, forward a copy to the Secretary
7 of State, and forward the original to the Commission, which shall
8 retain the original and send one copy to the Registrar-Recorder of
9 Los Angeles County and one copy to the Clerk of the City and
10 County of San Francisco. The Commission shall be the filing
11 officer.

12 (b) Candidates for statewide elective office—one original and
13 one copy with the person with whom the candidate's declaration
14 of candidacy is filed, who shall forward the copy to the Secretary
15 of State and the original to the Commission, which shall retain the
16 original and send one copy to the Registrar-Recorder of Los
17 Angeles County and one copy to the Clerk of the City and County
18 of San Francisco. The Commission shall be the filing officer.

19 (c) Members of the Legislature and Board of Equalization—one
20 original with the agency, which shall make and retain a copy,
21 forward a copy to the Secretary of State, and forward the original
22 to the Commission, which shall retain the original and send one
23 copy to the elections official of the county that contains the largest
24 percentage of registered voters in the election district that the
25 officeholder represents, and one copy to the elections official of
26 the county in which the officeholder resides. No more than one
27 copy of each statement need be filed with the elections official of
28 any one county. The Commission shall be the filing officer.

1 (d) Candidates for the Legislature or the State Board of
2 Equalization—one original and one copy with the person with
3 whom the candidate's declaration of candidacy is filed, who shall
4 forward the copy to the Secretary of State and the original to the
5 Commission, which shall retain the original and send one copy to
6 the elections official of the county that contains the largest
7 percentage of registered voters in the election district in which the
8 candidate seeks nomination or election, and one copy to the
9 elections official of the county in which the candidate resides. No
10 more than one copy of each statement need be filed with the
11 elections official of any one county. The Commission shall be the
12 filing officer.

13 (e) Persons holding the office of chief administrative officer
14 and candidates for and persons holding the office of district
15 attorney, county counsel, county treasurer, and member of the
16 board of supervisors—one original with the county clerk, who
17 shall make and retain a copy and forward the original to the
18 Commission, which shall be the filing officer.

19 (f) Persons holding the office of city manager or, if there is no
20 city manager, the chief administrative officer, and candidates for
21 and persons holding the office of city council member, city
22 treasurer, city attorney, and mayor—one original with the city
23 clerk, who shall make and retain a copy and forward the original
24 to the Commission, which shall be the filing officer.

25 (g) Members of the Public Utilities Commission, members of
26 the State Energy Resources Conservation and Development
27 Commission, planning commissioners, and members of the
28 California Coastal Commission—one original with the agency,
29 which shall make and retain a copy and forward the original to the
30 Commission, which shall be the filing officer.

31 ~~(h) Persons appointed to a specific term on a state board,~~
32 ~~commission, or similar multimember body of the other state~~
33 ~~boards, commissions, or similar multimember bodies of the~~
34 ~~state—one original with the respective board, commission, or~~
35 ~~body, which shall make and retain a copy and forward the original~~
36 ~~to the Commission, which shall be the filing officer. forward a~~
37 ~~copy to the Commission.~~

38 (i) Members of the Fair Political Practices Commission—one
39 original with the Commission, which shall make and retain a copy

1 and forward the original to the office of the Attorney General,
2 which shall be the filing officer.

3 (j) Judges and court commissioners—one original with the clerk
4 of the court, who shall make and retain a copy and forward the
5 original to the Commission, which shall be the filing officer.
6 Original statements of candidates for the office of judge shall be
7 filed with the person with whom the candidate's declaration of
8 candidacy is filed, who shall retain a copy and forward the original
9 to the Commission, which shall be the filing officer.

10 (k) Except as provided in subdivision (l), heads of agencies,
11 members of boards or commissions not under a department of state
12 government, and members of boards or commissions not under
13 the jurisdiction of a local legislative body—one original with the
14 agency, which shall make and retain a copy and forward the
15 original to the code reviewing body, which shall be the filing
16 officer. The code reviewing body may provide that the original be
17 filed directly with the code reviewing body and that no copy be
18 retained by the agency.

19 (l) Heads of local government agencies and members of local
20 government boards or commissions, for which the Fair Political
21 Practices Commission is the code reviewing body—one original
22 to the agency or board or commission, which shall be the filing
23 officer, unless, at its discretion, the Fair Political Practices
24 Commission elects to act as the filing officer. In this instance, the
25 original shall be filed with the agency, board, or commission,
26 which shall make and retain a copy and forward the original to the
27 Fair Political Practices Commission.

28 (m) Designated employees of the Legislature—one original
29 with the house of the Legislature by which the designated employee
30 is employed. Each house of the Legislature may provide that the
31 originals of statements filed by its designated employees be filed
32 directly with the Commission, and that no copies be retained by
33 that house.

34 (n) Designated employees under contract to more than one joint
35 powers insurance agency and who elect to file a multiagency
36 statement pursuant to Section 87350—the original of the statement
37 with the Commission, which shall be the filing officer, and, with
38 each agency with which they are under contract, a statement
39 declaring that their statement of economic interests is on file with
40 the Commission and available upon request.

1 (o) Members of a state licensing or regulatory board, bureau,
2 or commission—one original with the agency, which shall make
3 and retain a copy and forward the original to the Commission,
4 which shall be the filing officer.

5 (p) Persons not mentioned above—one original with the agency
6 or with the code reviewing body, as provided by the code reviewing
7 body in the agency's conflict of interest code.

8 SEC. 2. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

17 SEC. 3. The Legislature finds and declares that this bill furthers
18 the purposes of the Political Reform Act of 1974 within the
19 meaning of subdivision (a) of Section 81012 of the Government
20 Code.

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 873

Introduced by Assembly Member Furutani
(Coauthor: Assembly Member Allen)

February 17, 2011

An act to add ~~Section 7508.6~~ Sections 87408, 87409, and 87410 to the Government Code, relating to ~~public employees' retirement~~ the *Political Reform Act of 1974*.

LEGISLATIVE COUNSEL'S DIGEST

AB 873, as amended, Furutani. ~~Public employees' retirement: pension fund management. Political Reform Act of 1974: postgovernment employment restrictions.~~

The Public Employees' Retirement Law creates the Public Employees' Retirement Fund, which is a trust fund created and administered solely for the benefit of the members and retired members of this system and their survivors and beneficiaries. The Board of Administration of the Public Employees' Retirement System (PERS) has the exclusive control of the administration and investment of the retirement fund.

The Teachers' Retirement Law establishes the State Teachers' Retirement System (STRS) in order to provide a financially sound plan for the retirement, with adequate retirement allowances, for teachers in public schools of the state, teachers in schools supported by the state, and other persons employed in connection with the schools. The plan and the system are administered by the Teachers' Retirement Board.

~~This bill would prohibit an individual, who was a member of the retirement board of PERS or STRS or an administrator, executive officer, investment officer, or general counsel of the system, from~~

~~accepting employment, within 2 years after separation from the system, with any employer with which the individual participated personally and substantially with contracts or investments valued greater than \$10 million any time in the previous 5 years while the individual was employed by, or served on the board of, the system, as specified. The bill would except from that prohibition a former employee of PERS or STRS working for any entity whose principal market is unrelated to the individual's prior service.~~

~~The bill would also prohibit an individual from, for 2 years after separation from the system, accepting employment with any placement agent who has successfully placed an investment with either PERS or STRS during the prior 10 years.~~

The Political Reform Act of 1974 imposes specified restrictions on the postgovernment employment activities of elected state officers and designated employees of state administrative agencies, including prohibiting those individuals from representing another person, by means of an appearance or communication, before a state administrative agency for the purpose of influencing specified actions for a period of one year after leaving state service.

This bill would prohibit members of the Board of Administration of PERS, members of the Teachers' Retirement Board, and specified officers and employees of PERS and STRS from engaging in certain employment activities after leaving service with PERS or STRS. Specifically, the bill would prohibit those individuals from representing another person, by means of an appearance or communication, before PERS or STRS for the purpose of influencing specified actions for a period of 4 years after leaving service with PERS or STRS. The bill would also prohibit those individuals from assisting a business entity, for a period of 2 years after leaving service with PERS or STRS, to perform, implement, or execute a contract if the individuals participated in awarding, negotiating, or administering a contract of greater than \$10,000,000 with that business entity within 2 years prior to leaving service with PERS or STRS. In addition, the bill would prohibit those individuals from accepting compensation for providing services as a placement agent, for a period of 10 years after leaving service with PERS or STRS, in connection with investments or other business of PERS or STRS.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a ²/₃ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 87408 is added to the Government Code,
2 to read:
3 87408. (a) A member of the Board of Administration of the
4 Public Employees' Retirement System, an individual in a position
5 designated in subdivision (a) or (e) of Section 20098 or in an
6 equivalent senior management position, or an information
7 technology or health benefits manager with a career executive
8 assignment designation with the Public Employees' Retirement
9 System, for a period of four years after leaving that office or
10 position, shall not, for compensation, act as an agent or attorney
11 for, or otherwise represent, any other person, except the state, by
12 making a formal or informal appearance before, or an oral or
13 written communication to, the Public Employees' Retirement
14 System, or an officer or employee thereof, if the appearance or
15 communication is made for the purpose of influencing
16 administrative or legislative action, or influencing an action or
17 proceeding involving the issuance, amendment, awarding, or
18 revocation of a permit, license, grant, or contract, or the sale or
19 purchase of goods or property.
20 (b) A member of the Teachers' Retirement Board, an individual
21 in a position designated in subdivision (a) or (d) of Section 22212.5
22 of the Education Code, or an information technology manager

1 *with a career executive assignment designation with the State*
2 *Teachers' Retirement System, for a period of four years after*
3 *leaving that office or position, shall not, for compensation, act as*
4 *an agent or attorney for, or otherwise represent, any other person,*
5 *except the state, by making a formal or informal appearance*
6 *before, or an oral or written communication to, the State Teachers'*
7 *Retirement System, or an officer or employee thereof, if the*
8 *appearance or communication is made for the purpose of*
9 *influencing administrative or legislative action, or influencing an*
10 *action or proceeding involving the issuance, amendment, awarding,*
11 *or revocation of a permit, license, grant, or contract, or the sale*
12 *or purchase of goods or property.*

13 *SEC. 2. Section 87409 is added to the Government Code, to*
14 *read:*

15 *87409. (a) A member of the Board of Administration of the*
16 *Public Employees' Retirement System, an individual in a position*
17 *designated in subdivision (a) or (e) of Section 20098 or in an*
18 *equivalent senior management position, or an information*
19 *technology or health benefits manager with a career executive*
20 *assignment designation with the Public Employees' Retirement*
21 *System, for a period of two years after leaving that office or*
22 *position, shall not assist a business entity to perform, implement,*
23 *or execute a contract if, during the period of two years prior to*
24 *leaving that office or position, the individual participated, as an*
25 *official or employee of the Public Employees' Retirement System,*
26 *in the award, negotiation, or administration of a contract, or an*
27 *amendment to a contract, that has or had a value of greater than*
28 *ten million dollars (\$10,000,000) and to which that business entity*
29 *is or was a party.*

30 *(b) A member of the Teachers' Retirement Board, an individual*
31 *in a position designated in subdivision (a) or (d) of Section 22212.5*
32 *of the Education Code, or an information technology manager*
33 *with a career executive assignment designation with the State*
34 *Teachers' Retirement System, for a period of two years after*
35 *leaving that office or position, shall not assist a business entity to*
36 *perform, implement, or execute a contract if, during the period of*
37 *two years prior to leaving that office or position, the individual*
38 *participated, as an official or employee of the State Teachers'*
39 *Retirement System, in the award, negotiation, or administration*
40 *of a contract, or an amendment to a contract, that had a value of*

1 greater than ten million dollars (\$10,000,000) and to which that
2 business entity was or is a party.

3 (c) For purposes of this section:

4 (1) "Administration of a contract" means the management,
5 direction, or oversight of a contract, including evaluation of the
6 contractor's performance.

7 (2) "Business entity" has the same meaning as set forth in
8 Section 82005, and includes a parent or subsidiary of a business
9 entity.

10 (3) A contract to which a business entity is or was a party has
11 a value of greater than ten million dollars (\$10,000,000) if the
12 business entity received or will receive more than ten million
13 dollars (\$10,000,000) in revenue during the term of the contract
14 as a result of the contract.

15 (4) Notwithstanding paragraph (3), with respect to a business
16 entity that is an external manager and that receives a performance
17 fee, a contract to which the business entity is or was a party is
18 presumed to have a value of greater than ten million dollars
19 (\$10,000,000) if the external manager managed or manages fifty
20 million dollars (\$50,000,000) or more in an investment fund or
21 managed or manages, pursuant to contract, a portfolio of securities
22 or other assets valued at two hundred fifty million dollars
23 (\$250,000,000) or more.

24 SEC. 3. Section 87410 is added to the Government Code, to
25 read:

26 87410. (a) A member of the Board of Administration of the
27 Public Employees' Retirement System or an individual in a position
28 designated in subdivision (a) or (e) of Section 20098, for a period
29 of 10 years after leaving that office or position, shall not accept
30 compensation for providing services as a placement agent in
31 connection with investments or other business of the Public
32 Employees' Retirement System.

33 (b) A member of the Teachers' Retirement Board or an
34 individual in a position designated in subdivision (a) or (d) of
35 Section 22212.5 of the Education Code, for a period of 10 years
36 after leaving that office or position, shall not accept compensation
37 for providing services as a placement agent in connection with
38 investments or other business of the State Teachers' Retirement
39 System.

1 *SEC. 4. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 *SEC. 5. The Legislature finds and declares that this bill furthers*
11 *the purposes of the Political Reform Act of 1974 within the meaning*
12 *of subdivision (a) of Section 81012 of the Government Code.*

13 ~~SECTION 1. The Legislature finds and declares all of the~~
14 ~~following:~~

15 ~~(a) The flow of skills between the public and private sector~~
16 ~~promotes efficiency and collaboration between both sectors and~~
17 ~~is essential to the success of many government programs.~~

18 ~~(b) The trading of information acquired as a government~~
19 ~~employee and unavailable to members of the general public, for~~
20 ~~the purpose of personal enrichment, undermines taxpayer~~
21 ~~investments and public confidence in those investments.~~

22 ~~SEC. 2. Section 7508.6 is added to the Government Code, to~~
23 ~~read:~~

24 ~~7508.6. (a) (1) An individual described in paragraph (2) shall~~
25 ~~not, for two years after separation from a system, accept~~
26 ~~employment with any employer with which the individual~~
27 ~~participated personally and substantially with system contracts or~~
28 ~~investments valued greater than ten million dollars (\$10,000,000)~~
29 ~~any time in the previous five years while the individual was~~
30 ~~employed by, or serving on the board of, the system.~~

31 ~~(2) Paragraph (1) shall apply to any individual who was a~~
32 ~~member of the retirement board of a system, or an administrator,~~
33 ~~executive officer, investment officer, or general counsel of a~~
34 ~~system.~~

35 ~~(b) The prohibition in subdivision (a) includes, but is not limited~~
36 ~~to, any individual who participate personally and substantially in~~
37 ~~system investments or contracts in excess of ten million dollars~~
38 ~~(\$10,000,000) when any of the following apply:~~

39 ~~(1) The decision to award a modification of a contract or~~
40 ~~subcontract was in excess of ten million dollars (\$10,000,000).~~

1 ~~(2) The decision to award a task order or delivery order was in~~
2 ~~excess of ten million dollars (\$10,000,000).~~

3 ~~(3) The decision to establish overhead or other rates was valued~~
4 ~~in excess of ten million dollars (\$10,000,000).~~

5 ~~(4) The decision to approve issuing a payment or payments was~~
6 ~~in excess of ten million dollars (\$10,000,000).~~

7 ~~(5) The decision to pay or settle a claim was in excess of ten~~
8 ~~million dollars (\$10,000,000).~~

9 ~~(e) The prohibition in subdivision (a) shall not prohibit a former~~
10 ~~employee of a system from working for any entity whose principal~~
11 ~~market is unrelated to the individual's prior service.~~

12 ~~(d) Notwithstanding subdivision (a), an individual shall not, for~~
13 ~~two years after separation from a system, accept employment with~~
14 ~~any placement agent, as defined by subdivision (d) of Section~~
15 ~~7513.8, who has successfully placed an investment with either~~
16 ~~system during the prior 10 years.~~

17 ~~(e) For the purposes of this section, "system" means the Public~~
18 ~~Employees' Retirement System or the State Teachers' Retirement~~
19 ~~System.~~

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1146

Introduced by Assembly Member Norby

February 18, 2011

An act to amend Sections ~~84300~~ 84203.5, 84211, 84300, and 84304 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 1146, as amended, Norby. Political Reform Act of 1974: contribution limits.

Existing law, *the Political Reform Act of 1974*, prohibits ~~cash contributions or~~ anonymous campaign contributions of \$100 or more to a candidate, committee, or other person in a calendar year. Existing law also ~~prohibits cash campaign expenditures~~ *requires that the value of all in-kind contributions of \$100 or more be reported in writing to the recipient upon the recipient's written request. Existing law further requires that detailed specified information be reported for each person to whom independent expenditures are made, or from whom contributions are received, totalling \$100 or more during a reporting period.*

This bill would find that the current limit of \$100 was established more than 30 years ago and would raise the ~~minimum campaign contribution and expenditure reporting~~ *limit for anonymous contributions and the threshold for reporting as to contributions and independent expenditures to \$200 to align it with the limit applicable under federal law to campaign disclosures.*

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes

upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (A) Under the Federal Election Campaign Act (U.S.C. Sec. 431
4 et seq.), political committees for federal campaigns must disclose
5 contributions having an aggregate amount, in a calendar year, of
6 two hundred dollars (\$200).

7 (B) The current one hundred dollar (\$100) limit for ~~cash or~~
8 anonymous contributions for California campaigns under the
9 Political Reform Act of 1974 was established more than 30 years
10 ago.

11 (C) An increase in the limit for ~~cash or~~ anonymous contributions
12 under the Political Reform Act of 1974 is necessary to maintain
13 the limit at a level consistent with that set at the time the act was
14 enacted.

15 SEC. 2. Section 84203.5 of the Government Code is amended
16 to read:

17 84203.5. (a) In addition to any campaign statements required
18 by this article, if a candidate or committee has made independent
19 expenditures totaling one thousand dollars (\$1,000) or more in a
20 calendar year to support or oppose a candidate, a measure, or
21 qualification of a measure, it shall file independent expenditure
22 reports at the same time, covering the same periods, and in the
23 places where the candidate or committee would be required to file
24 campaign statements under this article, as if it were formed or
25 existing primarily to support or oppose the candidate or measure
26 or qualification of the measure. No independent expenditure report
27 need be filed to cover a period for which there has been no activity
28 to report.

29 (b) An independent expenditure report shall contain the
30 following information:

31 (1) The name, street address, and telephone number of the
32 candidate or committee making the expenditure and of the

1 committee's treasurer, and the number assigned to the committee
2 by the Secretary of State.

3 (2) If the report is related to a candidate, the full name of the
4 candidate and the office and district for which the candidate seeks
5 nomination or election. If the report is related to a measure or
6 qualification of a measure, the number or letter of the measure, or
7 if none has yet been assigned, a brief description of the subject
8 matter of the measure, and the jurisdiction in which the measure
9 is to be voted on or would be voted on if it qualified.

10 (3) The total amount of expenditures related to the candidate or
11 measure during the period covered by the report made to persons
12 who have received less than ~~one~~ *two* hundred dollars ~~(\$100)~~ *(\$200)*.

13 (4) The total amount of expenditures related to the candidate or
14 measure during the period covered by the report made to persons
15 who have received ~~one~~ *two* hundred dollars ~~(\$100)~~ *(\$200)* or more.

16 (5) For each person to whom an expenditure of ~~one~~ *two* hundred
17 dollars ~~(\$100)~~ *(\$200)* or more related to the candidate or measure
18 has been made during the period covered by the report and for
19 each person who has provided consideration for an expenditure of
20 ~~one~~ *two* hundred dollars ~~(\$100)~~ *(\$200)* or more during the period
21 covered by the report:

22 (A) His or her full name.

23 (B) His or her street address.

24 (C) If the person is a committee, the name of the committee,
25 the number assigned to the committee by the Secretary of State,
26 or if no number has been assigned, the full name and street address
27 of the treasurer of the committee.

28 (D) The date of the expenditure.

29 (E) The amount of the expenditure.

30 (F) A brief description of the consideration for which each
31 expenditure was made and the value of the consideration if less
32 than the total amount of the expenditure.

33 (G) The cumulative amount of expenditures to such person.

34 (6) A list of all the filing officers with whom the committee
35 filed its most recent campaign statement.

36 (c) Filing officers shall maintain paper reports filed pursuant to
37 this section under the name of the candidate or measure supported
38 or opposed by the independent expenditure.

39 *SEC. 3. Section 84211 of the Government Code is amended to*
40 *read:*

1 84211. Each campaign statement required by this article shall
2 contain all of the following information:

3 (a) The total amount of contributions received during the period
4 covered by the campaign statement and the total cumulative amount
5 of contributions received.

6 (b) The total amount of expenditures made during the period
7 covered by the campaign statement and the total cumulative amount
8 of expenditures made.

9 (c) The total amount of contributions received during the period
10 covered by the campaign statement from persons who have given
11 a cumulative amount of ~~one~~ *two* hundred dollars ~~(\$100)~~ *(\$200)* or
12 more.

13 (d) The total amount of contributions received during the period
14 covered by the campaign statement from persons who have given
15 a cumulative amount of less than ~~one~~ *two* hundred dollars ~~(\$100)~~
16 *(\$200)*.

17 (e) The balance of cash and cash equivalents on hand at the
18 beginning and the end of the period covered by the campaign
19 statement.

20 (f) If the cumulative amount of contributions (including loans)
21 received from a person is ~~one~~ *two* hundred dollars ~~(\$100)~~ *(\$200)*
22 or more and a contribution or loan has been received from that
23 person during the period covered by the campaign statement, all
24 of the following:

25 (1) His or her full name.

26 (2) His or her street address.

27 (3) His or her occupation.

28 (4) The name of his or her employer, or if self-employed, the
29 name of the business.

30 (5) The date and amount received for each contribution received
31 during the period covered by the campaign statement and if the
32 contribution is a loan, the interest rate for the loan.

33 (6) The cumulative amount of contributions.

34 (g) If the cumulative amount of loans received from or made to
35 a person is ~~one~~ *two* hundred dollars ~~(\$100)~~ *(\$200)* or more, and a
36 loan has been received from or made to a person during the period
37 covered by the campaign statement, or is outstanding during the
38 period covered by the campaign statement, all of the following:

39 (1) His or her full name.

40 (2) His or her street address.

1 (3) His or her occupation.

2 (4) The name of his or her employer, or if self-employed, the
3 name of the business.

4 (5) The original date and amount of each loan.

5 (6) The due date and interest rate of the loan.

6 (7) The cumulative payment made or received to date at the end
7 of the reporting period.

8 (8) The balance outstanding at the end of the reporting period.

9 (9) The cumulative amount of contributions.

10 (h) For each person, other than the filer, who is directly,
11 indirectly, or contingently liable for repayment of a loan received
12 or outstanding during the period covered by the campaign
13 statement, all of the following:

14 (1) His or her full name.

15 (2) His or her street address.

16 (3) His or her occupation.

17 (4) The name of his or her employer, or if self-employed, the
18 name of the business.

19 (5) The amount of his or her maximum liability outstanding.

20 (i) The total amount of expenditures made during the period
21 covered by the campaign statement to persons who have received
22 ~~one~~ *two* hundred dollars-~~(\$100)~~ (\$200) or more.

23 (j) The total amount of expenditures made during the period
24 covered by the campaign statement to persons who have received
25 less than ~~one~~ *two* hundred dollars-~~(\$100)~~ (\$200).

26 (k) For each person to whom an expenditure of ~~one~~ *two* hundred
27 dollars-~~(\$100)~~ (\$200) or more has been made during the period
28 covered by the campaign statement, all of the following:

29 (1) His or her full name.

30 (2) His or her street address.

31 (3) The amount of each expenditure.

32 (4) A brief description of the consideration for which each
33 expenditure was made.

34 (5) In the case of an expenditure which is a contribution to a
35 candidate, elected officer, or committee or an independent
36 expenditure to support or oppose a candidate or measure, in
37 addition to the information required in paragraphs (1) to (4) ~~above~~,
38 *inclusive*, the date of the contribution or independent expenditure,
39 the cumulative amount of contributions made to a candidate,
40 elected officer, or committee, or the cumulative amount of

1 independent expenditures made relative to a candidate or measure;
2 the full name of the candidate, and the office and district for which
3 he or she seeks nomination or election, or the number or letter of
4 the measure; and the jurisdiction in which the measure or candidate
5 is voted upon.

6 (6) The information required in paragraphs (1) to (4), inclusive,
7 for each person, if different from the payee, who has provided
8 consideration for an expenditure of five hundred dollars (\$500) or
9 more during the period covered by the campaign statement.

10 For purposes of subdivisions (i), (j), and (k) only, the terms
11 “expenditure” or “expenditures” mean any individual payment or
12 accrued expense, unless it is clear from surrounding circumstances
13 that a series of payments or accrued expenses are for a single
14 service or product.

15 (l) In the case of a controlled committee, an official committee
16 of a political party, or an organization formed or existing primarily
17 for political purposes, the amount and source of any miscellaneous
18 receipt.

19 (m) If a committee is listed pursuant to subdivision (f), (g), (h),
20 (k), (l), or (q), the number assigned to the committee by the
21 Secretary of State shall be listed, or if no number has been assigned,
22 the full name and street address of the treasurer of the committee.

23 (n) In a campaign statement filed by a candidate who is a
24 candidate in both a state primary and general election, his or her
25 controlled committee, or a committee primarily formed to support
26 or oppose such a candidate, the total amount of contributions
27 received and the total amount of expenditures made for the period
28 January 1 ~~through~~ to June 30, *inclusive*, and the total amount of
29 contributions received and expenditures made for the period July
30 1 ~~through~~ to December 31, *inclusive*.

31 (o) The full name, residential or business address, and telephone
32 number of the filer, or in the case of a campaign statement filed
33 by a committee defined by subdivision (a) of Section 82013, the
34 name, street address, and telephone number of the committee and
35 of the committee treasurer. In the case of a committee defined by
36 subdivision (b) or (c) of Section 82013, the name that the filer uses
37 on campaign statements shall be the name by which the filer is
38 identified for other legal purposes or any name by which the filer
39 is commonly known to the public.

1 (p) If the campaign statement is filed by a candidate, the name,
2 street address, and treasurer of any committee of which he or she
3 has knowledge which has received contributions or made
4 expenditures on behalf of his or her candidacy and whether the
5 committee is controlled by the candidate.

6 (q) A contribution need not be reported nor shall it be deemed
7 accepted if it is not cashed, negotiated, or deposited and is returned
8 to the contributor before the closing date of the campaign statement
9 on which the contribution would otherwise be reported.

10 (r) If a committee primarily formed for the qualification or
11 support of, or opposition to, an initiative or ballot measure is
12 required to report an expenditure to a business entity pursuant to
13 subdivision (k) and 50 percent or more of the business entity is
14 owned by a candidate or person controlling the committee, by an
15 officer or employee of the committee, or by a spouse of any of
16 these individuals, the committee's campaign statement shall also
17 contain, in addition to the information required by subdivision (k),
18 that person's name, the relationship of that person to the committee,
19 and a description of that person's ownership interest or position
20 with the business entity.

21 (s) If a committee primarily formed for the qualification or
22 support of, or opposition to, an initiative or ballot measure is
23 required to report an expenditure to a business entity pursuant to
24 subdivision (k), and a candidate or person controlling the
25 committee, an officer or employee of the committee, or a spouse
26 of any of these individuals is an officer, partner, consultant, or
27 employee of the business entity, the committee's campaign
28 statement shall also contain, in addition to the information required
29 by subdivision (k), that person's name, the relationship of that
30 person to the committee, and a description of that person's
31 ownership interest or position with the business entity.

32 (t) If the campaign statement is filed by a committee, as defined
33 in subdivision (b) or (c) of Section 82013, information sufficient
34 to identify the nature and interests of the filer, including:

35 (1) If the filer is an individual, the name and address of the
36 filer's employer, if any, or his or her principal place of business
37 if the filer is self-employed, and a description of the business
38 activity in which the filer or his or her employer is engaged.

39 (2) If the filer is a business entity, a description of the business
40 activity in which it is engaged.

(3) If the filer is an industry, trade, or professional association, a description of the industry, trade, or profession which it represents, including a specific description of any portion or faction of the industry, trade, or profession which the association exclusively or primarily represents.

(4) If the filer is not an individual, business entity, or industry, trade, or professional association, a statement of the person's nature and purposes, including a description of any industry, trade, profession, or other group with a common economic interest which the person principally represents or from which its membership or financial support is principally derived.

~~SEC. 2.~~

SEC. 4. Section 84300 of the Government Code is amended to read:

84300. (a) No contribution of ~~two one~~ *one* hundred dollars ~~(\$200)~~ *(\$100)* or more shall be made or received in cash.

A cash contribution shall not be deemed received if it is not negotiated or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported. If a cash contribution, other than a late contribution, as defined in Section 82036, is negotiated or deposited, it shall not be deemed received if it is refunded within 72 hours of receipt. In the case of a late contribution, as defined in Section 82036, it shall not be deemed received if it is returned to the contributor within 48 hours of receipt.

(b) No expenditure of ~~two one~~ *one* hundred dollars ~~(\$200)~~ *(\$100)* or more shall be made in cash.

(c) No contribution of ~~two one~~ *one* hundred dollars ~~(\$200)~~ *(\$100)* or more other than an in-kind contribution shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or the intermediary, as defined in Section 84302.

(d) The value of all in-kind contributions of two hundred dollars (\$200) or more shall be reported in writing to the recipient upon the request in writing of the recipient.

~~SEC. 3.~~

SEC. 5. Section 84304 of the Government Code is amended to read:

1 84304. No person shall make an anonymous contribution or
2 contributions to a candidate, committee, or any other person
3 totaling two hundred dollars (\$200) or more in a calendar year.
4 An anonymous contribution of two hundred dollars (\$200) or more
5 shall not be kept by the intended recipient but instead shall be
6 promptly paid to the Secretary of State for deposit in the General
7 Fund of the state.

8 ~~SEC. 4.~~

9 *SEC. 6.* The Legislature finds and declares that this bill furthers
10 the purposes of the Political Reform Act of 1974 within the
11 meaning of subdivision (a) of Section 81012 of the Government
12 Code.

ASSEMBLY BILL

No. 1241

Introduced by Assembly Member Norby

February 18, 2011

An act to amend Section 84308 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 1241, as introduced, Norby. Political Reform Act of 1974: contributions.

The Political Reform Act of 1974 regulates contributions to public officials and also regulates conflicts of interests on the part of public officials while carrying out their respective duties. Among its provisions, the act prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from a party or participant in a proceeding involving a license, permit, or other entitlement for use while that proceeding is pending before the agency and for 3 months following the final decision in the proceeding. For these purposes, “officer” is defined to include any elected or appointed officer of the agency.

This bill would change the definition of “officer” for these purposes to exclude an elected officer of the agency.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 84308 of the Government Code is amended to read:

84308. (a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) “Party” means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) “Participant” means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) “Agency” means an agency as defined in Section 82003, except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the State Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) “Officer” means any ~~elected or~~ appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) “License, permit, or other entitlement for use” means all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) “Contribution” includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three

months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition ~~shall apply~~ *applies* regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent, if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

If an officer *who* receives a contribution ~~which~~ *that* would otherwise require disqualification under this section; returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to

1 any officer of that agency during the proceeding and for three
2 months following the date a final decision is rendered by the
3 agency in the proceeding. When a closed corporation is a party to,
4 or a participant in, a proceeding involving a license, permit, or
5 other entitlement for use pending before an agency, the majority
6 shareholder is subject to the disclosure and prohibition
7 requirements specified in subdivisions (b); *and* (c); and this
8 subdivision.

9 (e) Nothing in this section shall be construed to imply that any
10 contribution subject to being reported under this title shall not be
11 so reported.

12 SEC. 2. The Legislature finds and declares that this bill furthers
13 the purposes of the Political Reform Act of 1974 within the
14 meaning of subdivision (a) of Section 81012 of the Government
15 Code.

Memorandum
Fair Political Practices Commission

To: FPPC Chair Ravel, and Commissioners Garrett, Eskovitz, Montgomery and Rotunda

From: Scott Hallabrin, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: May 12, 2011

ProtectMarriage.Com et al. v. Bowen et al.

This action was filed on January 9, 2009 in the United States District Court for the Eastern District of California by plaintiffs ProtectMarriage.com - Yes on 8, a Project of California Renewal and National Organization for Marriage California - Yes on 8, Sponsored by National Organization for Marriage. It is a “defendants class action” lawsuit against defendants responsible either for enforcement of the Act, or maintenance and publication of the campaign reports at issue in this case (including the Commission, Attorney General, Secretary of State and various district and city attorneys). The Commission defendants were formally served on January 14, 2009.

Plaintiffs challenge the Act’s campaign disclosure requirements on contributions to ballot measure committees as unconstitutional. They cite a variety of adverse actions against persons who supported Proposition 8, which was on the November 2008 ballot, alleging that some of these persons were identified through campaign contribution information made public as required by the Act’s campaign reporting and disclosure provisions. The Complaint seeks to permanently enjoin the future disclosure of all of plaintiffs’ contributors, expunge the records of all of plaintiffs’ past contributors, and to invalidate as unconstitutional the Act’s \$100 disclosure threshold for contributors to ballot measure committees, the Act’s requirement for post-election disclosure of contributors to ballot measure committees, and the Act’s failure to purge the records of contributors to ballot measure committees after the election. In all counts, plaintiffs seek declaratory and injunctive relief, and an award of attorney’s fees.

Plaintiffs moved for a preliminary injunction on shortened time, which was heard on January 29, 2009 before District Judge Morrison C. England, Jr. The court denied plaintiffs’ motion from the bench, concluding that plaintiffs had failed to demonstrate the probability of success on the merits or the likelihood of irreparable injury necessary to support a preliminary injunction. The court issued a written order to this effect on January 30. On February 3, 2009 the Commission defendants timely filed their Answer to Plaintiffs’ Second Amended Complaint. On May 15, 2009 the court issued the Scheduling Order to set the timing of further proceedings and on May 27, 2009 the court issued another order granting Plaintiffs’ motion, not opposed by

Defendants, to file a Third Amended Complaint adding the National Organization for Marriage California PAC to the list of Plaintiffs. The Answer to this Complaint was filed on June 5, 2009.

On June 3, 2009 Plaintiffs filed a Motion for Class Certification and a Motion for Summary Judgment, together with supporting documents. Defendants filed Notices of Non-Opposition to the Class Certification Motion, and on June 10, 2009 filed a Motion seeking denial of Plaintiffs' Motion for Summary Judgment or, in the alternative, continuance of the hearing date under Rule 56. On June 24, 2009 the Court issued an Order denying Plaintiffs' Motion for Summary Judgment, and on August 6, 2009 advised that it would decide class certification without oral argument. The parties reached agreement on class certification and, on November 9, 2009 filed a Stipulation and Proposed Order, entered by the Court on November 25, 2009. The parties are engaged in discovery. Defendants moved the Court for a modification of the 2009 Scheduling Order to allow an extension of the discovery period due to a dispute with Plaintiffs, which the Court granted on May 13, 2010.

Michelle Berman and Adrienne Lauby v. Fair Political Practices Commission

On December 15, 2010, Michelle Berman and Adrienne Lauby filed a Verified Petition for Writs of Mandate in the Superior Court of Sacramento, California. Petitioners seek relief from the Default Decisions and Orders in cases of Michelle Berman, FPPC Case 10/115, and Adrienne Lauby, FPPC Case 10/116, asking the Court to set aside the Default Decisions and Orders in these cases and to require the Fair Political Practices Commission ("Commission") to accept the Notices of Defense and to grant a hearing in these matters. Additionally, Plaintiffs seek an award of attorney fees.

On January 6, 2011, the Commission filed a Demurrer to this Verified Petition for Writs of Mandate, a Memorandum of Points and Authorities, and a Notice of the Demurrer. A hearing on the Demurrer was scheduled for March 18, 2011. On March 14, the Commission withdrew its Demurrer based on the fact that Petitioners had now exhausted their administrative remedies.

On February 28, 2011, Michelle Berman and Adrienne Lauby filed a second Verified Petition for Writs of Mandate in the Superior Court of Sacramento, California, seeking relief from the Default Decisions and Orders in the cases of Michelle Berman, FPPC Case 10/115, and Adrienne Lauby, FPPC Case 10/116. Petitioners ask the Court to set aside the Default Decisions and Orders in these cases and to require the Commission to accept the Notices of Defense and to grant a hearing in these matters. Additionally, Plaintiffs seek an award of attorney fees. The Commission was served with this Verified Petition for Writs of Mandate on March 22, 2011. Plaintiffs seek to consolidate the two Verified Petitions for Writs of Mandate. The Commission has agreed to stipulate to consolidate the two cases into one case.

On March 23, 2011, Petitioners filed a Notice of Related Case. On April 4, 2011, the Court determined that Superior Court Case Numbers 34-2010-80000740 and 34-2011-80000800 are related and assigned both cases to Superior Court Judge Allen Sumner.

On March 22, 2011, Petitioners requested the Administrative Record in the Enforcement Matters of Michelle Berman, FPPC Case 10/115, and Adrienne Lauby, FPPC Case 10/116. On April 18, 2011, the Enforcement Division served Petitioners with the Administrative Record. Further, on April 19, 2011, the Enforcement Division filed Answers to both Superior Court Case Numbers 34-2010-80000740 and 34-2011-80000800.

Tim Foley v. Fair Political Practices Commission

On May 11, 2011, Tim Foley filed a Verified Petition for Writ of Mandate in the Superior Court of Sacramento, California. Petitioner seeks relief from the Default Decision and Order in the case of Tim Foley, FPPC Case 10/117, asking the Court to set aside the Default Decision and Order in this case and to require the Fair Political Practices Commission (“Commission”) to accept the Notice of Defense and to grant a hearing in this matter. Additionally, Plaintiff seeks an award of attorney fees. The Commission was served with this Verified Petition for Writ of Mandate on May 13, 2011.



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

To: Chair Ravel and Commissioners Eskovitz, Garrett, Montgomery and Rotunda

From: Roman G. Porter, Executive Director

Subject: Monthly Report on Commission Activities

Date: May 17, 2011

A. Divisional Updates

Technical Assistance Division

Calls to the Commission's toll-free advice line in March totaled 2,961 and in April totaled 5,144. On March 29th and 30th, staff responded to more than 350 calls each day.

The Division held four seminars explaining procedures on amending a state agency conflict-of-interest code. These were presented by MaryJo Tobola and Sarah Olson.

The Division prepared the Form 804-Disclosure of Consultants and New Positions as provided for in recent regulations. The Division is still accepting comments and plans to present the form at a future Commission meeting.

Due to a number of local elections in June and November the Division is adding filing schedules for general purpose recipient committees and major donor and independent expenditure committees, and will post the 2012 filing schedules soon.

The Division also revised a campaign fact sheet to include the new rule for sender identification on mass mailings.

Enforcement Division

Between the period of March 26, 2011, and May 2, 2011, the Enforcement Division opened 102 proactive cases and received 28 sworn complaints. Ten of these sworn complaints are currently in the intake process, 4 were assigned to active investigation, 2 were closed with warning letters and 12 were closed without action. During this time, the Division closed a total of 100 cases with 31 cases receiving warning letters, 1 receiving an advisory letter, 30 prosecuted by the Commission, 2 cases receiving no violation of the Act letters and 36 cases closing without action.

The 31 cases that were sent warning letters for the period of March 26, 2011, through May 2, 2011, included: 1 Statement of Economic Interests Reporting violation; 15 Statement of Economic Interests Failure to File violations; 13 Campaign violations; 1 Gift violation; and 1 Mass Mailing violation. The one advisory letter sent during the same period was for a Statement of Economic Interests Failure to File violation.

Currently, the Enforcement Division has 468 cases in various stages of resolution, which include the cases before the Commission as listed in the June 2011 agenda.

Legal Division

During March 21 through April 29, 2011, the Legal Division received 36 requests for written advice and completed 26 requests (9 formal, 15 informal, and 2 withdrawn). During the same period the Division received 14 Public Records Act (CPRA) requests, and completed 15 requests during this period.

B. Conflict-of-Interest Code: Adoption, Amendments and Exemptions

Pursuant to Section 87300 of the Government Code and Commission Regulations 18750, 18750.1 and 18751, state and multi-county agencies seeking to request an exemption or to adopt or amend a conflict-of-interest code must submit the request to the Commission for review and approval. The Technical Assistance Division has reviewed and, since the last agenda, I have approved the following conflict-of-interest codes adoptions and amendments:

Adoptions

Bay Area Schools Insurance Cooperative
South Bay Regional Public Safety Training Consortium
Sacramento San Joaquin Delta Conservancy
So California Community College District JPA
Panoche Drainage District

Amendments

Coast Life Support
Dublin San Ramon Services District
Bay Area Air Quality Management District
Hanford Joint Union High School District
Castaic Lake Water Agency
Kings River Conservation District
Coachella Valley Water District
Monterey Bay Unified Air Pollution Control District
Modesto Irrigation District
Nevada Irrigation District

C. Audit Reports

Pursuant to Sections 90001, 90004 and 90006 of the Government Code, the Commission periodically conducts audits and prepares audit reports. Since my last report, the following audits have been completed:

Barbara Alby and her controlled committee **Taxpayers For Barbara Alby For Board of Equalization 2010**. Ms. Alby was a candidate for Board of Equalization in the 2010 Primary Election.

Rae Williams. Ms. Williams was a candidate for Board of Equalization in the 2010 Primary Election.

D. Advice Letter Summaries from March 21 through April 29, 2011

Campaign**Nancy L. Warren****A-11-060**

Where an Assembly Member's 2010 committee received a small refund of \$441 from a governmental agency, the State Compensation Insurance Fund, and funds from that committee were permitted to be carried over to the subsequent committee for the same Assembly office, the refund check may be directly deposited into the bank account of the 2012 committee without being required to reopen the 2010 committee.

Governor Brown**A-11-063**

Given the facts that the Governor will not request or solicit any contributions for the Council on Physical Fitness and Sports or engage in any other fundraising efforts on the Council's behalf, and that no one on his staff or acting as an agent of his is soliciting contributions to the organization on his behalf, donations made to the California Council on Physical Fitness and Sports do not need to be reported by Governor Brown as "behested payments."

Conflict of Interest**Patti Walker****A-11-007**

A city council member may participate in a decision involving a city home loan program unless it is reasonably foreseeable that the decision will affect (1) his mortgage company's annual gross revenues or assets by \$20,000 or annual expenses by \$5,000, or (2) the income, investments, or assets or liabilities (other than real property) of any of the company's clients by \$1,000.

A city council member may not participate in a decision regarding the continued employment, performance evaluation or salary of the city manager, who rents property from a real estate partnership in which the council member is a partner because it is reasonably foreseeable that the decision will affect the city manager's income, investments, liabilities or assets (other than real property) by \$1,000.

Howard Vipperman**A-11-009**

A Councilmember was advised that he may participate in a governmental decision regarding a code enforcement action when the action concerns property owned by someone with whom he has a personal and business relationship so long as there is no reasonably foreseeable material financial effect upon any of his economic interests.

Mark A. Blum**A-11-029**

The city council is considering a new Walmart development project. The councilmember owns and operates three Subway restaurants in the region as a franchisee. Subway has a historic relationship with Walmart stores, frequently locating Subway franchises in Walmart's. As part of the councilmember's franchise agreement, he has the right of first refusal for any new Subways in the region, including any located in the new Walmart. Based on these facts, it appears reasonably foreseeable that the Walmart Project will have a material financial affect on his business.

Arnold M. Alvarez-Glasman**I-11-030**

A Councilmember was advised that he may participate in the governmental decisions related to potential wine and food establishments in his town, provided they do not have a material financial effect on his deli. Ultimately, it is up to the public official to make the determination through a good faith effort to assess the financial effects of the decision by using some reasonable and objective method of valuation. The councilmember's analysis of the materiality standard will determine whether it is reasonably foreseeable that any of the materiality standards will be met related to the potential decisions before the city council.

Steve Paine**A-11-035**

An explanation of the limitations imposed by the Act on an official with a conflict of interest in a governmental decision, and of the official's right to seek to influence a decision by addressing the decisionmakers as a member of the public representing his own personal interests as a landowner.

Gary Yep**A-11-037**

Mayor sought advice as to whether he may participate in decisions regarding a Super Wal-Mart project when he has a one-third interest in a retail grocery store whose sales will likely be impacted by the project. Official may not make, participate in making, or influence decisions regarding the proposed Wal-Mart project because the governmental decisions will have a reasonably foreseeable material financial effect on the official's business interest. In addition, based on the facts provided, the official does not qualify under the public generally exception.

Loren A. Stephen-Porter**I-11-038**

The board secretary of a fire protection district sought advice on behalf of the agency as to whether a conflict interest would exist if a director participated in decisions involving salary and benefit negotiations for the district's labor groups when the negotiations likely have an impact on the salary and benefits of director's son-in-law, who is employed by the district as a firefighter/paramedic. We advised the requestor that under the facts presented, the director does not have an economic interest in decisions involving the labor groups' salary and benefits negotiations. Absent an economic interest in a decision, a conflict of interest does not exist.

Ronald R. Ball**I-11-044**

Officials' economic interests in properties, within 500 feet of street improvements included in a proposal for the city's downtown area, are directly involved in decisions regarding the proposal. The financial effect of the decisions on these economic interests is presumed to be material. Accordingly, the officials may not make, participate in making, or influence the decisions unless they can (1) rebut the presumption of materiality by showing that it is not reasonably foreseeable the decisions will have *any* financial effect on their properties and (2) determine that there will be *no* reasonably foreseeable material financial effects on any other economic interest they may have. In addition, decisions regarding the proposal may be "segmented" only to the extent that the decision regarding the street improvements is considered first, without the officials' participation, and future decisions regarding other more specific projects (1) will not have a reasonably foreseeable material financial effect on any of officials' economic interests and (2) will not act to determine, affirm, nullify, or alter the decision regarding the street improvements.

David L. Erwin**A-11-049**

Generally, where a source of income represents an applicant before the official, rather than being the actual applicant or subject of the decision, the source of income is indirectly involved in the decision because the source is appearing before the official in a representative capacity.

John A. Russo**A-11-052**

A sitting city councilmember or a staff attorney in the City Attorney's Office, seeking an appointment to the City Attorney position by the city council, is not prohibited from discussing the appointment or the specific parameters of his or her potential employment with other city council members in his or her private capacity.

Philip M. Jay**I-11-055**

A former employee of an air pollution control district is prohibited under Section 87406.1 from appearing before or communicating with his former governmental employer, for a period of one-

year upon leaving his position, if the appearance or communication is made for the purpose of influencing a regulatory action.

Anthony Lewis**I-11-057**

An agency counsel sought advice regarding conflict of interest provisions of the Act. The official wished to know whether a senior manager in his agency would have a conflict-of-interest due to her stock investments in companies that do business with the agency.

Requestor was advised that a conflict of interest in a given situation is necessarily a fact-sensitive analysis and because his inquiry was general in nature and did not involve specific governmental decisions, the Commission will only provide general guidance. Several advice letters were enclosed for review: *Reiter* Advice Letter, I-06-113; *Larson* Advice Letter, I-06-073; and *Reyes* Advice Letter, A-04-210. Requestor told that should he have questions regarding a specific governmental decision to contact us for further advice.

David Gordon**A-11-068**

An official who has refused payment from a business for his previously provided services, without “receiving” the payment, does not have an economic interest in the business or its parent business as a source of income. Accordingly, the official may take part in a decision regarding the parent businesses so long as there is no reasonably foreseeable material financial effect on any other economic interests the official may have.

Lobbying**Philip R. Recht****I-11-015**

Requestor was advised on several questions related to the application and interpretation of Assembly Bill 1743 (“the Bill or AB 1743”). The Bill makes several amendments and additions to the Act to effectuate the overall goal of including placement agents under the definition of lobbyists. These additions and amendments to the Act have the effect of applying to placement agents all the regulations that currently apply to lobbyists. Thus, placement agents must register with the Secretary of State, complete certain disclosures, and may not accept payments that are contingent on the success of any administrative action.

Robert Palmer**I-11-019**

An association consisting of retirement systems in 20 California counties was advised regarding Assembly Bill 1743 (“the Bill or AB 1743”). Its questions come down to determining which is the proper entity to interpret, implement, and enforce the placement agent rules regarding the local jurisdictions. While the Bill does not give guidance on this point, given that the Bill applies to persons acting as placement agents in connection with investments by a local retirement system and states that those persons should file applicable reports with a “local government agency that requires lobbyists to register and file reports,” we believe that it is the local government agency that oversees lobbyists that would also oversee placement agents.

Peter C. Williams**I-11-031**

Requestor was advised on several questions related to the application and interpretation of Assembly Bill 1743 (“the Bill or AB 1743”). (1) Whether it has a “reach back” provision that would affect contracts into which parties entered before AB 1743 took effect. (2) Section 86300 exempts individuals working in the capacity of a state employee from the definition of lobbyist. (3) If the people in his firm who are working to obtain a contract with a California public retirement or pension system fit within the definition of “placement agent” in Section 82047.3, and no exception applies, they must register as lobbyists under the provisions of the Act. (4) In this instance, the Act does not

apply to local jurisdictions. The Bill, however, states that if a local jurisdiction contains provisions for lobbyists, than those provisions also apply to placement agents.

Miscellaneous

Jennifer Martin-Gallardo

A-11-046

Requestor is advised that Section 87450, is a stand-alone rule that is not subject to the 8-step conflict-of-interest analysis under Sections 87100 and 87103. Because Section 87450 clearly states that it is “in addition to the provisions of [Section 87100];” and applies to state administrative officials rather than public officials and it does not require a conflict of interest per se, but, rather, is an outright prohibition on a specified form of conduct whether or not a conflict of interest exists.

Personal Use

Hal Stocker

A-11-051

Public official sought advice whether he may donate left-over campaign funds from a prior election to public schools in his county. Advised the requestor that the donation may be made so long as the proceeds will not have a material financial effect on the official, a member of the official's immediate family, the official's campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds held by the official's committee.

Revolving Door

Paul Mount II

A-11-045

Former state employee asks whether the post-governmental employment provisions of the Act prohibit him from working as a consultant for a private company in order to prepare and negotiate a proposal with his former employer.

Because he left state service on September 2008, the provisions of the one-year ban no longer apply to him; and because he did not participate “personally and substantially by making, participating in the making, or influencing of a governmental decision,” he is not prohibited under the Act's permanent ban from accepting employment as a consultant.

Brian Killian

A-11-041

A former member of a municipal Design Review Board is not barred by the Act's conflict of interest rules, or by the Act's “revolving door” provisions, from responding to the city's solicitation for bids to perform an equipment safety audit.

SEI

Maren Nelson and Scott B. Silverman

A-11-039

An interest in a defined benefit pension plan, including a cash balance plan, qualified under Internal Revenue Code Section 401(a) and investments held in such a plan are not “investments” for purposes of the Act.

David Aranda

I-11-059

Generally, where a source of income represent an applicant before the official, rather than being the actual applicant or subject of the decision, the source of income is indirectly involved in the decision because the source is appearing before the official in a representative capacity.